Country of Origin Information

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Chapter 1

Introduction: a standard for the assessment of Country of Origin Information in the determination of the need for international protection

1. Introduction

Country of Origin Information (COI) is used by decision makers in the assessment of a claim for refugee status or other forms of international protection. Country of Origin Information provides decision makers with relevant background information on the country of origin of an asylum applicant necessary to view a claim in the proper context.[1] It concerns information on the human rights and security situation as well as the political situation and the legal framework, cultural aspects and societal attitudes, the humanitarian and economic situation, events and incidents, and geography.[2] Often, decision makers are provided with guidance for decision-making by policy makers and/or the judiciary on how to evaluate Country of Origin Information in the context of international protection standards aimed at improving consistency in decision-making. Guidance for decision-making puts forward profiles of people that may be eligible for refugee status or subsidiary protection and provide specific circumstances that may be relevant for the decision maker to take into consideration while determining an individual's future risk in his or her country of origin.

This PhD examines the evidentiary assessment of Country of Origin Information in guidance for decision-making in leading jurisprudence and policy guidelines. It will focus on several institutions that are involved in asylum decision-making at different levels, namely a supranational court, a national court, a UN Agency and national administrations.

First, this PhD specifically studies which COI quality standards are set and how these standards are applied to the Country of Origin Information used in guidance for decision-making to come to a balanced conclusion on the protection needs of people coming from a specific country of origin. The research questions are therefore phrased as follows:

- What COI quality standards are set by reputable courts, such as the European Court of Human Rights (ECtHR) and the Immigration and Asylum Chamber of the United Kingdom Upper Tribunal, by the UN agency for refugees (UNHCR), and by national policy makers in particular EU Member States? And,

- How are these COI quality standards applied in practice in guidance for decision-making found in leading decisions by the ECtHR, in Country Guidance Determinations by the UK Upper Tribunal, in UNHCR Eligibility Guidelines, and in national policies regarding Safe Countries of Origin?

The research findings have been published in the form of articles in peer-reviewed journals.[3] The article on the ECtHR can be found in chapter 2, on the UK Upper Tribunal in chapter 3, on UNHCR in chapter 4, and finally, the article with the findings of the research on the use of

1 UN High Commissioner for Refugees (UNHCR), *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, UN Doc HCR/1P/4/ENG/REV.3 (1979, reissued 2019) (UNHCR Handbook) para 42.

2 Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), 'Researching Country of Origin Information: Training Manual' (ACCORD training manual) (November 2013) 12

3 The article on the use of country of origin information in the national designations of safe countries of origin has been submitted to the Refugee Survey Quarterly and is currently being revised for publication.

Country of Origin Information in the designation of a Safe Country of Origin can be found in chapter 5.

Second, the research aims to uncover good practices regarding the evidentiary assessment of Country of Origin Information in guidance for decision-making. For this purpose, chapter 6 will examine how the different standards relate to one another. Moreover, the different standards and practices will be compared and set against the COI quality standards in the training manual of the Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD).[4] The comparison will serve as the basis for recommendations on how the evidentiary assessment of Country of Origin Information can be improved and better reflected in decisions and guidance for decision-making. Therefore, the third research question is phrased as follows:

- What good practices are observed by the ECtHR, the UK Upper Tribunal, UNHCR and/or the (former) EU Member States that can form the basis for recommendations on how the evidentiary assessment of Country of Origin Information can be improved and better reflected in considerations concerning international protections needs?

The recommendations will focus on the standards and practices of examined institutions. One set of recommendations will specifically focus on the application of the common standards on Country of Origin Information at the level of the European Union because any suggestions regarding the EU common COI quality standards concern the use of Country of Origin Information in all EU Member States.

This introductory chapter aims to set out the importance of the use of Country of Origin Information in the determination of a need for international protection and explain the decision to focus on the use of Country of Origin Information in guidance for decision-making. Following the discussion of a case study, supporting the relevance of Country of Origin Information in the assessment of the elements of an asylum claim (section 2), the introduction focuses on how the field of Country of Origin Information has evolved specifically in the European context (section 3). An examination of the existing literature on Country of Origin Information (section 4) will lead to a discussion of the focus of the research (section 5). This introduction finishes with a discussion of the scope and limitations of the study (section 6) and a reader's guide (section 7).

2. The importance of Country of Origin Information: Arzoo

Arzoo was born in 1352 (Gregorian calendar 1973) in Jalalabad, the capital of Nangarhar province in Afghanistan. She comes from a well-off family, her father a respected engineer. Arzoo's parents always encouraged her to do great things with her life. They treated Arzoo

4 ACCORD training manual (n 2).

and her brother as equals. As a result, Arzoo received a full education, finishing both primary and high school. Moreover, she managed to graduate from medical school in 2010. A rarity for a woman in Afghanistan. Arzoo's dream was to become a gynaecologist and after 2010 she had started her specialist training, working as a registrar in a Jalalabad hospital.

Arzoo is a strong advocate for women's reproductive rights. In 2012, she became involved with an NGO called Afghanistan Family Guidance Association (AFGA). AFGA aims to inform Afghan women of the importance of birth control. The reproductive health of Afghan women is poor and maternal mortality is extremely high. Pregnant women do not receive proper care due to the ongoing war. Moreover, Afghan women get their children very close together, not allowing their bodies the rest they need in between pregnancies. Advocating for the use of contraceptives got Arzoo in trouble.

In 2017, Arzoo started receiving several threatening phone calls, in which she was ordered to stop promoting contraceptives to women. One day, on her way home from the hospital, her rickshaw was hit by a black car. Arzoo was only left with a bump on her head, however, she received a phone call again after the incident. She was told that she had been lucky but would be killed next time. Arzoo reported the calls and the incident to the police, to no avail. They offered her a weapon to defend herself.

Jalalabad was not a safe city to begin with and the war was claiming lives all over Afghanistan. Both, Arzoo and her husband Homayon, an internal medicine specialist, knew stories of people being kidnapped or killed by the Taliban. Fearing Arzoo might be next, Arzoo and Homayon decided to leave Afghanistan with their four kids, their oldest daughter ten years old, their youngest son only five months old. Looking for a fast way out of Afghanistan, doubting their chances of ever getting a visa for a safe country for six people, Arzoo and Homayon decided to pay a human smuggler 55.000 euros to take them to Europe. The family travelled to Pakistan, where they stayed two days before flying from Islamabad to Dubai. In Dubai, the smuggler told Arzoo to travel ahead with her children, Homayon was to stay behind in Dubai and travel at a later date. He forbade Arzoo and Homayon to contact each other. They would only be reunited after five months of radio silence. Arzoo and her four kids were flown to an unknown destination in Europe, where they continued their journey by car. Early one morning in June 2017, hungry and tired, they were dropped somewhere in the streets of Brussels with a note holding the address for the Commissioner General for Refugees and Stateless persons.

2.1 Credibility

Although, the burden of proof to establish her well-founded fear of persecution lies with Arzoo, it is the duty of the Belgian Protection Officer of the Commissioner General for Refugees and Stateless persons to assess the validity of her evidence and the credibility of her statements.[5] Objective and impartial Country of Origin Information serves to support the Protection Officer in his assessment of Arzoo's claim for international protection.[6] It puts

5 UNHCR Handbook (n 1) paras 93, 195, 205; Directive 2011/95/EU of the European Parliament and the Council of 13 December 2011 on the standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for uniform status for refugees or persons eligible for subsidiary protection, and for the content of the protection granted (recast) [2011] OJ L 337/9 – 337/26, art 4 (1).

6 ACCORD (n 2) 12, 13.

into context the evidence Arzoo provides and it ensures the Protection Officer understands Arzoo's risks in Afghanistan.[7] COI forms the basis for the decision on her credibility and the possible risks she may face upon return to Afghanistan. Consider, for example, the following relevant elements in Arzoo's story and the importance of COI in the assessment of these elements by the Protection Officer.

The Protection Officer, as part of the Middle Eastern Section of the Commissioner General for Refugees and Stateless persons, first uses Country of Origin Information to familiarise himself with the general political and socioeconomic situation in Afghanistan. It provides him with a general understanding of the background situation in Afghanistan, necessary to hear and decide asylum claims from applicants from Afghanistan.

With regard to Arzoo's claim specifically, the Protection Officer tries to establish whether Arzoo is a credible asylum applicant. He needs to confirm whether Arzoo is who she says she is, and whether she is truly from Jalalabad, Afghanistan. There are no identity documents available, therefore, the Protection Officer questions Arzoo on her family history and furthermore checks her knowledge of Jalalabad. For the Protection Officer to be able to assess Arzoo's background information and knowledge on Jalalabad, he consults Country of Origin Information. He first focuses on the situation of girls in Afghanistan, more in particular their right to education in the 1990s and 2000s and their ability to enjoy that right. He researches schools and universities in Jalalabad. Moreover, the Protection Officer is interested in information on Jalalabad's structure, positions of major (teaching) hospitals, leading politicians, any major events that have happened in the city in the past and more recently, etc. The Protection Officer relies on Google maps, but also on COI reports by, for example, the European Asylum Support Office (EASO), the UK Home Office, the United Nations Children's Fund (UNICEF), and news reports by Radio Free Europe and the UN News Service. The Protection Officer uses the information to verify Arzoo's familiarity with Jalalabad as well as her statements on her upbringing, how she was able to enforce her right to education in a Taliban controlled/war torn Afghanistan, which school(s) and university she attended, and which hospitals she worked at.

The Protection Officer also uses the family's travel route to further examine Arzoo's credibility. He asks Arzoo about their travel documents, the family's stay in Islamabad and Dubai, the flight from Pakistan and the flight to Europe, and how the family managed to collect the 55.000 euro for the human smuggler. Information on Islamabad, Dubai, flight times, and airlines support the answers provided by Arzoo.

Arzoo is deemed credible, thus far.

2.2 Well-founded fear of being persecuted

The second part of the Protection Officer's examination focuses on establishing whether Arzoo has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.[8] The Protection Officer considers

7 James C Hathaway and Michelle Foster, *The Law of Refugee Status* (2nd edn, Cambridge University Press 2014) 122, 136.

8 Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (1951 Refugee Convention) art 1A (2).

Arzoo's statements regarding her work as a gynaecologist and her work for AFGA as well as the prevailing situation for women in general and their reproductive rights specifically, including any relevant laws and regulations in Afghanistan and the manner in which they are applied.[9]

The Protection Officer studies guidelines on Afghanistan by UNHCR for direction on whether women, health care workers, and/or people working for NGOs could be considered at risk in Afghanistan for reasons of belonging to a particular social group or their (imputed) political opinion within the meaning of the 1951 Refugee Convention. He uses the references in the guidelines for further examination of Country of Origin Information on the situation of women and their reproductive rights in Afghanistan. The Protection Officer relies on information from, for example, the United States Department of State, UN Secretary-General, UN Assistance Mission to Afghanistan (UNAMA), Amnesty International, Human Rights Watch, etc. He studies AFGA's website to establish how the organisation exactly works and where they are active. The Protection Officer refers a few more specific questions to the COI Unit, who are better trained at researching Country of Origin Information and often have information readily available in the form of COI reports. The Protection Officer brings together all the available information and compares it to Arzoo's evidence and statements on her life as a gynaecologist and her experience with informing her fellow women on birth control options. The Country of Origin Information reinforces Arzoo's claims.

Furthermore, the Protection Officer needs to establish whom Arzoo fears. Although, the phone calls Arzoo received were anonymous, she stated she knew from experience who could be behind the calls. The Protection Officer collects Country of Origin Information on the position of the several different warring groups in Afghanistan in relation to women and their reproductive rights which further supports Arzoo's statement on the matter.

Only a person that is unable, or owing to a well-founded fear of being persecuted, is unwilling to avail himself of the protection of his or her country of origin, can be considered a refugee.[10] Therefore, the last element for the Protection Officer to consider, is the fact that the police apparently were unwilling or unable to protect Arzoo. The Protection Officer focuses his COI research on the structure of the Afghan police, the effectiveness of the police in Afghanistan and more in particular the police in Jalalabad. The Country of Origin Information overwhelmingly confirms the ineffectiveness of the Afghan police apparatus to protect against human rights abuses. Having confirmed Arzoo's credibility and having weighed all Arzoo's statements against the available Country of Origin Information, the Protection Officer proceeds to grant Arzoo refugee status.

2.3 Indiscriminate violence in an armed conflict

Alternatively, if Arzoo would not have been granted refugee status, she might have been eligible for subsidiary protection if she were at real risk of suffering serious harm. Serious harm consists of (a) the death penalty or execution, (b) torture or inhuman or degrading treatment or punishment, or (c) serious and individual threat to a civilian's life or person by

9 UNHCR Handbook (n 1) paras 37 – 44; Art 4(3) recast EU Qualification Directive.
10 Art 1A (2) Refugee Convention.

reason of indiscriminate violence in situations of international or national armed conflict.[11] Although, (a) and (b) would entail a similar examination of the elements of Arzoo's claim for a well-founded fear of being persecuted, eligibility for subsidiary protection on the grounds of (c) would have required the Protection Officer to determine the level of indiscriminate violence in Jalalabad and/or Nangahar province.

In general, Country of Origin Information is not determinative of a claim of international protection. Arzoo's case shows that her statements in combination with available information on her country of origin led to her recognition as a refugee. The Country of Origin Information was weighed against the evidence provided by Arzoo to establish whether she would be at risk upon return in Afghanistan. Greater weight might be given to Country of Origin Information if it proves more persuasive than the evidence put forward by the asylum applicant.[12] Likewise, in the assessment of the level of indiscriminate violence and the risks to a civilian's life as a result of that violence, the individual elements are less important, and Country of Origin Information is the determinative factor of the eligibility for subsidiary protection.

For the Protection Officer to be able to determine the level of indiscriminate violence, he will first examine whether the parties to the conflict in Afghanistan are either employing methods and tactics of warfare which increase the risk of civilian casualties or are directly targeting civilians. Furthermore, the Protection Officer will examine whether the use of such methods and/or tactics are widespread among the parties to the conflict, whether the fighting is localised or widespread, and finally, the number of civilians killed, injured and displaced as a result of the fighting.[13] The information collected by the COI Unit of the Commissioner General for Refugees and Stateless persons on the security situation in Jalalabad confirms attacks by Anti-Government Elements (AGE's). However, according to the COI report 'Focus Afghanistan' on the security situation in Jalalabad, the attacks are aimed at very specific targets, such as government personnel, and the number of civilian casualties remain low. Therefore, the level of indiscriminate violence in the city is not severe enough to warrant eligibility for subsidiary protection for asylum applicants from Jalalabad. Arzoo does not qualify for subsidiary protection on account of the security situation in her region of origin alone.[14] Interestingly, the EASO has concluded otherwise. It concluded in June 2018 that the available Country of Origin Information did point to a level of indiscriminate violence in Nangarhar that minimal individual elements are required to show substantial grounds for believing that a civilian, returned to the province, would face a real risk of serious harm in the meaning of Article 15(c) recast Qualification Directive.'[15]

Arzoo's case study shows that it is crucial to include Country of Origin Information in the assessment of all the aspects of an asylum claim, from determining the credibility of a claim to examining the well-founded fear of persecution or future risk at serious harm. It also shows that it is crucial to rely on several different sources, that have been assessed for reliability and weighed, to come to a balanced conclusion on the need for international protection.

11 Art 15 recast EU Qualification Directive.
12 Hathaway and Foster (n 7) 122, 136.
13 *Sufi and Elmi* v. *the United Kingdom*, App Nos 8319/07 and 11449/07 (ECHR, 28 June 2011) para 241.
14 E.g., Council for Alien Law Litigation, App No 214.459 (20 December 2018) 3-4.
15 European Asylum Support Office, 'EASO Country Guidance: Afghanistan, Guidance Note and Common Analysis' (EASO Guidance Note Afghanistan 2019) (June 2019) 89.

3. The rise of Country of Origin Information co-operation and quality standards in the European Union

The following section provides a historical overview of the evolution of Country of Origin Information (section 3.1). It outlines the most important developments and actors in the field of Country of Origin Information, particularly in the European context. The overview focuses on the ongoing developments in the European Union (EU) because European integration has already led to close co-operation regarding Country of Origin Information and is still progressing. The practical co-operation now covers 25 EU Member States as well as Iceland, Liechtenstein, Norway, and Switzerland. Moreover, the practical co-operation is not restricted to simply sharing of information. EASO has been established to coordinate all COI efforts and to build on individual Member States' experiences and expertise. There is a strong believe within the European Union that access to the same Country of Origin Information, assessed according to the same quality standards and jointly evaluated, will lead to more uniform decisions in EU Member States.[16]

3.1 Early developments

The importance of Country of Origin Information has never been in doubt, it has always provided the objective element or factual evidence in the assessment of a need for international protection.[17] However, in the early days of refugee status determination, COI research mostly consisted of consulting a few human rights reports, available in hard copies, dating back a few years.[18] For a long time, national administrations produced and managed Country of Origin Information as an after-thought, it was chronically underfunded. There was no systematic approach towards collecting Country of Origin Information, other than ad hoc collections by individual refugee status determination officers.[19] These collections were often incomplete, quickly out-of-date, and retrospective rather than forward-looking.[20]

A sharp rise in the number of asylum applications and different groups of asylum applicants originating from outside of Europe resulted in a growing caseload for refugee status determination officers.[21] This overwhelmed the asylum systems in Western European states which eventually led to a more systematic approach to Country of Origin Information during the 1990s and into the 2000s.[22] Country of Origin Information research became a profession of its own right. Instead of refugee status determination officers researching

16 Communication from the Commission to the European Parliament and the Council: Towards a Reform of the Common European Asylum System and Enhancing Legal Avenues to Europe, Brussels COM/2016/0197 final, 13.
17 E.g. UNHCR Handbook (n 1) paras 42, 43.
18 Gábor Gyulai, 'Country Information in Asylum Procedures: Quality as a Legal Requirement in the EU,' Hungarian Helsinki Committee (November 2007) 9.
19 United Nations High Commissioner for Refugees (UNHCR), 'Country of Origin Information: Towards Enhanced International Cooperation (UNHCR COI policy paper) (February 2004) 5.
20 Hans Thoolen, Chief of the Centre for Documentation on Refugees of UNHCR, 'Final Report, Consultancy on Country of Origin Information' (Evian Report) (March 1990) 28.
21 Ibid 1.
22 Ibid 1.

Country of Origin Information on the side, Country of Origin Information was now researched by people trained to do so in dedicated COI units.[23] Canada was the first state to establish a Country of Origin Information specialist unit in 1988, the Immigration and Refugee Board Documentation Centre. Other countries followed suit, such as the United States of America (1990), Germany (1990), the Netherlands (1994), Belgium (1997), the United Kingdom (1997), Finland (1998), Ireland (2000), and Norway (2001).[24] The structure of COI units still varies significantly, both in terms of mandates and methodologies. For example, some of the COI units function under the Ministry for Foreign Affairs, others are incorporated in the Immigration services within the Ministry of Justice. Depending on the available resources, a COI unit can employ between 12 and 100 staff members.[25] However, all these COI units were set up with the same purpose in mind, to collect, store, analyse and distribute Country of Origin Information. The changing character of Country of Origin Information led to a call for inter-governmental co-operation and common quality standards.

3.2 European practical co-operation[26]

The proposals for the exchange of Country of Origin Information date back to the late 1980s.[27] The Intergovernmental Consultations on Migration, Asylum and Refugees,[28] 'an informal, non-decision-making forum for intergovernmental information exchange and policy debate on issues of relevance to the management of international migratory flows,'[29] hosted a COI working group in 1989 in Dardagny, Switzerland. The first meeting of its kind in the world.[30] The meetings of the working group on Country of Origin Information continue to this date. This allows for regular contact between officials working on similar issues for different states facilitating the growth of 'a community of practice' in the field of Country of Origin Information. The working group meetings have helped shape 'the emergence of COI research as a specialised profession' through the exchange of experiences and good practices, the contribution to the development of COI methodology, the exchange of Country

23 Gyulai 2007 (n 18) 9; International Centre for Migration Policy Development (ICMPD), 'Comparative Study on Country of Origin Information Systems – Study on COI Systems in Ten European Countries and the Potential for Further Improvement of COI Cooperation' (April 2006).

24 Patrick Wall, 'In a Constructive, Informal and Pragmatic Spirit; Thirty years of the Intergovernmental Consultations on Migration, Asylum and Refugees, the World's First Regional Consultative Process on Migration, Secretariat of the Intergovernmental Consultations on Migration, Asylum and Refugees (IGC)' (2018) 156.

25 ICMPD 2006 (n 23); See also Wall (n 24) 154, 155.

26 See also, Claudia Engelmann, *Common Standards via Backdoor: The Domestic Impact of Asylum Policy Coordination in the European Union* (University Press Maastricht 2015) Chapter 5. The author uses the coordination between national asylum authorities on country of origin information as a case study, providing three empirical examples of practical coordination on country of origin information, to show how asylum policy coordination works.

27 UNHCR COI Policy Paper (n 19); Wall (n 24) 152.

28 The IGC brings together 17 Participating States, the UNHCR, the International Organisation for Migration and the European Union. The Participating States are Australia, Belgium, Canada, Denmark, Finland, Germany, Greece, Ireland, Netherlands, New Zealand, Poland, Norway, Spain, Sweden, Switzerland, United Kingdom and United States of America.

29 Wall (n 24) 6.

30 Ibid 10, 157.

of Origin Information for other purposes then asylum decision-making, and the discussion of management issues.[31]

A step towards a more formal exchange of Country of Origin Information was made by the Immigration Ministers of the European Council in June 1992 when they decided to set up a Centre for Information, Discussion and Exchange on Asylum ('Centre d'information, de reflexion et d'échange en matière d'asile' or CIREA).[32] The establishment of CIREA followed the call for exchange of information in the Dublin Convention[33] as well as the 1992 London resolution on Safe Countries of Origin (SCO).[34] Its chief aim was the effective coordination of asylum policy of the Member States.[35] CIREA was tasked with the collection of Country of Origin Information in joint reports based on guidelines by the Council. According to these guidelines, the joint reports drawn up by EU Member States' embassies 'ought to provide an accurate overall picture of the political, economic and social situation in the third country, without being over-detailed since it is vital that they be drawn up quickly.' The joint reports were to include 'certain items of information,' such as recent political developments, the actual situation on the regime and security situation, etc.[36] There was no joint political assessment of situations in third countries within CIREA.[37]

The CIREA reports were confidential. National authorities could use the reports together with other items of information at their disposal and the reports could be made available to parties to a dispute where there was an appeal against a decision by the authorities responsible for matters concerning asylum or aliens.[38] In practice, the CIREA reports were only rarely shared outside CIREA which made it very difficult to check whether, and if, to what extent Member States policies were based on the joint reports. As a result, it was extremely hard to challenge the information.[39] The European Court of Justice (ECJ) ruled in the case of *Kuijer v. Council of the European Union* that the refusal to grant access to CIREA documents was unlawful.[40]

In 1998, a High-Level Working Group on Asylum and Migration was established by the Council.[41] The High-Level Working Group, made up of senior officials from EU Member States and members of the European Commission, aimed to establish a joint, integrated, cross-pillar approach to the situation in the main countries of origin of asylum-seekers and migrants. The High-Level Working Group was charged with much wider duties than CIREA; The country

31 Ibid 155.
32 European Council, 'Decision setting up the CIREA (Centre for Information, Discussion and Exchange on Asylum)' [1992] WGI 1107.
33 Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities (Dublin Convention) [1990] OJ 97/C 254/01 – 254/12, Art 14 (2).
34 European Union, 'Council Resolution of 30 November 1992 on Manifestly Unfounded Applications for Asylum (London Resolution)' [1992] paras 7, 8.
35 Advisory Council of International Affairs, Asylum Information and the European Union, 'Advice nr. 8' [July 1999] 8.
36 Council of the European Union, 'Guidelines for Joint Reports on Third Countries' [1994] OJ C 274/52 – 274/55.
37 Advisory Council of International Affairs, Asylum Information and the European Union 1999 (n 35) 9.
38 Council of the European Union, 'Circulation and confidentiality of joint reports on the situation in certain third countries' [1994] OJ C 274, 43.
39 Advisory Council of International Affairs, Asylum Information and the European Union 1999 (n 35) 9; Gregor Noll, *Negotiating Asylum: The EU Acquis, Extraterritorial Protection and the Common Market of Deflection* (Martinus Nijhof Publishers 2000) 131.
40 *Kuijer v Council of the European Union*, Case T-188/98 (ECJ 6 April 2000).
41 Council Conclusions on the Asylum and Migration Task Force at the 2148th Council Meeting General Affairs [Dec 1998] C/98/431.

information reports drawn up by the working group did not only include information on the political, human rights and security situation, but also information on migration and refugee problems (collected by CIREA), identification of humanitarian aid, agreements about the readmission of own nationals and the scope for reception in the region. This information was used for, for example, arranging humanitarian aid in the region and feasibility studies for readmission agreements.[42] The High-Level Working Group was supposed to cease to function after the 1999 European Council meeting in Tampere, however, it is still active to this day. Even though the working group carries out assessments of the political, economic and human rights situation in countries of origin and provides joint analysis of the causes and consequences of migration, its focus is on the external relations of the European Union with third countries.[43] The working group has had limited influence on the European Union's approach to Country of Origin Information internally or on the joint assessment of situations in countries of origin in the context of the determination of a need for protection within in the European Union.

In July 2002, CIREA was renamed EURASIL and continued to function under the auspices of the European Commission. EURASIL was defined as:

> A European Union Network for asylum practitioners providing a forum for the exchange of Country of Origin Information, best practices and a variety of policy-related matters among EU Member States, asylum adjudicators and the European Commission, which aims to improve and maximise convergence on approaches to, and assessment of, the protection needs of asylum seekers.[44]

Representatives of the national ministries and asylum authorities of the EU Member States attended the EURASIL meetings. Depending on the topics of the meetings, international organisations, such as UNHCR and the International Organisation for Migration (IOM), would attend EURASIL meetings as external experts.[45]

In the meantime, the European Union had started working on the creation of the Common European Asylum System (CEAS). The foundation of the CEAS was (and still is) 'the need for solidarity among Member States in addressing a challenge that, in an EU without internal borders, cannot be effectively dealt with by individual countries acting alone.'[46] Within the EU, Member States have a shared responsibility to treat asylum applicants in a dignified, fair manner, and to examine their asylum applications effectively and according to uniform standards. The ultimate goal of the CEAS is, that no matter in what EU Member State an asylum application lodges his or her claim, the outcome should be the same.[47] For this purpose,

42 Advisory Council of International Affairs, Asylum Information and the European Union 1999 (n 35) 9.

43 See <https://ec.europa.eu/home-affairs/content/high-level-working-group-asylum-and-migration_en> accessed 25 April 2020.

44 <https://ec.europa.eu/home-affairs/content/eurasil_en> accessed 25 April 2020.

45 European Commission staff working document - Annexes to the Communication from the Commission to the Council and the European Parliament on strengthened practical co-operation - New structures, new approaches: improving the quality of decision making in the common European asylum system {COM(2006) 67 final} /* SEC/2006/0189 */, Annex C (European Commission staff working document SEC(2006)) para 22.

46 Communication from the Commission to the Council and the European Parliament on strengthened practical co-operation - New structures, new approaches: improving the quality of decision making in the Common European Asylum System {SEC(2006) 189} /* COM/2006/0067 final*/ [2006] (Commission communication SEC(2006)) para 3.

47 See <https://ec.europa.eu/home-affairs/what-we-do/policies/asylum_en> accessed 2 April 2020.

legislative measures were taken to harmonise common minimum standards on asylum. These legislative measures also included legally binding requirements regarding the use of Country of Origin Information in the assessment of asylum claims. For example, article 4(3)(a) of the recast Qualification Directive states that the assessment of an application for international protection should take into account 'all relevant facts as they relate to the country of origin at the time of taking a decision on the application, including laws and regulations of the country of origin and the manner in which they are applied.'[48] Article 10(3)(b) of the recast Asylum Procedures Directive requires Member States to obtain up to date and precise information from various sources.[49]

However, the Commission reasoned that it was necessary to work towards harmonisation, not only of legislation, but also of practice:

> Practical co-operation will enable Member States to become familiar with the systems and practices of others, and to develop closer working relations among asylum services at the operational level. This will build a basis for wider areas of collaboration, with the development of trust and a sense of mutual interest. The main goal of practical co-operation is to improve convergence in decision-making by Members States within the framework of the rules set by the Community asylum legislation.[50]

According to the Commission, practical co-operation would lead to better quality decision-making contributing to level the EU asylum playing field. Regarding Country of Origin Information, this meant that Member States should work towards using the same sources and apply country of origin in the same way.[51]

The 'The Hague Programme' in 2004 called for the establishment of appropriate structures to facilitate practical co-operation between the national asylum services of Member States. The EU Member States were to be assisted in, among other things, jointly compiling, assessing and applying Country of Origin Information. The EURASIL Network continued to meet as an expert group providing the Commission with advice on country of origin-oriented activities within the framework for practical co-operation.[52] EURASIL worked towards ensuring access to the same information sources that have been collected and assessed in compliance with common standards and principles. Therefore, one of EURASIL's key objectives was to establish common standards on the processing of Country of Origin Information. [53]

48 See also, Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (Qualification Directive) [2004] OJ L 304/12 – 304/23.

49 Council Directive 2013/32/EU of 26 June 2013 of the European Parliament and of the Council on minimum standards on procedures in Member States for granting and withdrawing refugee status (recast) [2013] OJ L 180/60 – 180/95; See also Article 8(2) (b) of the Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (Asylum Procedures Directive) [2005] OJ L 326/13 – 326/34.

50 Commission communication SEC(2006) (n 46) para 4.

51 European Commission staff working document SEC(2006) (n 45) para 25.

52 European Council, 'The Hague Programme: Strengthening Freedom, Security and Justice in the European Union' [2005] OJ C 53/1 – 53/14 (The Hague Programme) para 1.3.

53 Commission communication SEC(2006) (n 46) para 14; European Commission staff working document SEC(2006) (n 45) paras 25, 26, 29.

3.3 EU common COI quality standards

The higher demand for COI quality standards was not only fuelled by a more systematic approach to Country of Origin Information by national authorities and the creation of the CEAS. Due to the advancement of information technology, Country of Origin Information, such as governmental reports, NGO reports and news reports became widely available through the internet.[54] Nowadays, a seemingly limitless amount of Country of Origin Information is available, and social media has become very important in the distribution of real-time information.[55] This called for firm rules of research, documentation and use in order to avoid bad decisions based on faulty Country of Origin Information which could possibly result in a refugee being sent back to a country where his or her life is in real danger. [56]

3.3.1 The EU Common Guidelines on the Processing of COI

According to a 2006 European Commission staff working document, the experience in the framework of EURASIL showed that COI quality standards varied widely between Member States. Some Member States had invested in sophisticated systems, while others relied on more basic systems or on NGO or UNHCR services.[57] However, EURASIL's experience also showed that an agreement could be reached on a set of basic common principles. These basic principles should address transparency, cross-checking and citation.[58] The application of the principles on the use of Country of Origin Information at the national level would be the first step towards the long-term objective of harmonised application of Country of Origin Information,[59] and, for example, joint assessment of situations in countries of origin.[60]

The work by EURASIL resulted in the 2008 EU Common Guidelines for the Processing of COI. The EU Common Guidelines aimed to 'provide basic common criteria on how to process transparent, objective, impartial, and balanced factual Country of Origin Information, with the aim of facilitating EU-wide exchange and use of such information.'[61] The guidelines offer general principles regarding the definition and selection of sources, and the verification of sources. They also offer criteria concerning the assessment of the quality of information, on how to cross-check and balance information. Lastly, the guidelines offer advice on the presentation of information in COI products.[62] The guidelines were prepared on the basis of various forms of input from EU Member States as well as Canada, Norway, Switzerland, the European Commission, and UNHCR. It is noteworthy, that the independent Austrian Centre

54 Gyulai 2007 (n 18) 9
55 ACCORD (n 2) 5; See also 'Evian report' (n 20) 28.
56 Gyulai 2007 (n 18) 9.
57 European Commission staff working document SEC(2006) (n 45) para 25.
58 Ibid para 54.
59 Ibid para 29.
60 European Commission, 'Green Paper on the future Common European Asylum System' [2007] COM/2007/301 final (Green paper) 9.
61 European Union, 'Common EU Guidelines for Processing Country of Origin Information (COI)' (EU Common guidelines) [2008] JLS/2005/ARGO/GC/0, 3, 2 – 3.
62 Ibid 5 – 19.

for Country of Origin and Asylum Research and Documentation (ACCORD) also provided input for the guidelines.[63]

3.3.2 The ACCORD training manual

ACCORD has been active in the field of Country of Origin Information since 1999.[64] The European Country of Origin Information Network (Ecoi.net), managed by ACCORD and since January 2019 endorsed by UNHCR as the main platform for Country of Origin Information,[65] first went online in June 2001. It 'aims to contribute to fair and efficient refugee status determination procedures by securing easy and fast access to high-quality and up to-date Country of Origin Information for all actors involved in asylum cases.'[66] The portal gives access to over 300.000 full text documents from 160 different sources and is an important player in the dissemination of information. Moreover, for over many years, ACCORD has been providing COI training, together with UNHCR, to 'UNHCR staff, state decision makers, judges, lawyers and legal aid providers around the world.'[67] In 2004, ACCORD developed an extensive training manual in co-operation with the Dutch Refugee Council, the Informationsverbund Asyl, the Refugee Documentation Centre Ireland, and the Refugee Legal Centre.[68] The 2004 manual was a product of the project 'COI Network & Training' co-funded by European Refugee Fund Community Action 2003, the NGO version of practical co-operation on Country of Origin Information in the European Union.[69]

3.3.3 The EASO COI Report Methodology

The EU Common Guidelines for Processing COI were reiterated in the EASO COI Report Methodology in 2012. EASO was established in 2010 to further enhance practical co-operation between EU Member States and a common approach to Country of Origin Information is an important aspect of EASO's activities.[70] For the purpose of researching, writing and publishing its own COI reports,[71] EASO developed the EASO COI Report Methodology.[72] EASO encourages all Member States to use the EASO COI Methodology for their COI reports. The methodology is split into five sections: Standards, Initiation, Research, Report, and

63 Ibid 3.
64 ACCORD (n 2) 6.
65 Joint communication by UNHCR and the Austrian Red Cross, 15 January 2019.
66 <https://www.ecoi.net/en/about/f.a.q/> accessed 25 April 2020.
67 ACCORD (n 2) 5.
68 Ibid 1.
69 The ACCORD training manual has been fully updated with full support from UNHCR in 2013. The 2013 training manual reflects the experiences of ACCORD in the European context as well as draws examples from non-European countries. The COI quality standards in the training manual are 'geared towards an international target group comprising COI service providers, administrative decision makers, legal advisors, judges and everyone dealing with COI,' ACCORD (n 2) 5, 6.
70 EU Regulation 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office (EASO regulation) [2010] OJ L132/11–132/28.
71 Available at <https://www.easo.europa.eu/information-analysis/country-origin-information/country-reports> accessed 25 April 2020.
72 European Asylum Support Office, 'EASO Country of Origin Information report methodology' (EASO COI Methodology 2012) (July 2012).

Finalisation and follow-up. It includes an annex with a glossary and a COI report template. Most of the methodology concerns common standards for the final COI product, such as language and timing. For example, the section on standards includes minimum standards, such as neutrality and objectivity, usability (relevant and logically arranged information, unambiguous language), validity (the cross-checking of information), transparency and publicity, and quality control. The section on research includes the quality standards for the collection of information as well as standards for the selection and validation of sources[73] and information.[74]

Since 2012, EASO has identified the need to clarify certain concepts and revise the 2012 methodology. The revised EASO COI Report Methodology was published in June 2019.[75] The parts of the revised methodology concerning the guiding principles applicable to the initiation and research process are structured in a different, more accessible, manner. In the second part of the methodology concerning the presentation of Country of Origin Information, EASO has replaced the term 'analysing' with 'synthesizing' Country of Origin Information:

> The synthesis reflects the analytical COI process and its components, namely the structuring of the content and the sorting of information along this structure, the source assessment and validation of information, including cross-checking of information. The drafter synthesises similar statements found in sources, presenting corroborating or contradictory information together, and makes the comparison clear for the reader.[76]

EASO has also introduced the term 'COI conclusions.' A 'COI conclusion aims to highlight main patterns in the analysed and validated information in order to assist the target users to draw informed conclusions relevant to their tasks.'[77] It is a reasoned evaluation based on the combined information of sources consulted in the research process that should not include legal assessments, policy or decision guidance.[78] Additionally, it is interesting to note that, according to the 2019 EASO COI Methodology, the disclaimer no longer needs to state that 'all information presented, except for undisputed/obvious facts, has been cross-checked, unless stated otherwise.'[79]

Finally, EASO has also published a judicial practical guide on Country of Origin Information.[80] The guide aims to provide a sound methodology for assessing Country of Origin Information compliant with the criteria in the recast Qualification Directive and the recast Asylum Procedures Directive to judges and decision makers. The judicial practical guide on Country of Origin Information highlights key issues, such as the definition of Country of Origin Information, how to use Country of Origin Information, when to use Country of Origin Information, how to assess sources of Country of Origin Information,

73 Ibid 7 – 10.
74 Ibid 10 – 11.
75 European Asylum Support Office, 'EASO Country of Origin Information report methodology' (EASO COI Methodology 2019) (June 2019).
76 Ibid 17.
77 Ibid 19.
78 Ibid.
79 Compare the EASO COI Report Methodology 2012 (n 72) 12 to EASO COI Report Methodology 2019 (n 75) 21.
80 European Asylum Support Office (EASO), 'Judicial Practical Guide on Country of Origin Information' (2018).

how to research Country of Origin Information, how to ask effective questions in relation to Country of Origin Information, how to refer to Country of Origin Information, etc.[81]

3.4 Towards common interpretation of Country of Origin Information

The European Union is in constant movement to fulfil its goal of a truly common European asylum system. The strive for harmonisation, driven by crises and/or other factors, is ongoing. In the period of reflection after the adoption of the first phase legal instruments of the CEAS (1999 – 2005), the need for practical co-operation grew stronger. More practical co-operation included aligning Member States' access to information on countries of origin and the way this information was assessed. The common approach to Country of Origin Information has been shaped through the adoption of common quality standards and providing access to the same COI sources through, for example, EASO's COI reports.

However, as a result of the continuing divergent practices in EU Member States, the European Union's interpretation of what a common approach on Country of Origin Information should entail, is evolving. Despite the efforts by the Council during the second phase of the CEAS (2008 – 2013), considerable differences have persisted between EU Member States regarding the outcome of asylum procedures, recognition rates and protection status granted. In 2015, the Commission called upon EASO to step up practical co-operation and to develop a role as the clearing house of national Country of Origin Information.[82] The reinforcement of EU-level COI production was considered a precondition for more convergence in asylum decisions. However, it was no longer believed that access to the same sources and the application of Country of Origin Information in the same manner would be sufficient. It was recognised that the actual use and the common interpretation of Country of Origin Information should be strengthened.[83]

EASO was set up to gather Country of Origin Information and draft transparent COI reports in accordance with its own COI methodology.[84] It was to analyse Country of Origin Information 'with a view to fostering convergence of assessment criteria.' The analysis would 'not purport to give instructions to Member States about the grant or refusal of applications for international protection.'[85] In 2016, the EU Commission proposed a stronger mandate for EASO. The Commission's proposal aims 'to strengthen the role of EASO and develop it into an agency which facilitates the implementation and improves the functioning of the CEAS.'[86] The Commission considers EASO a tool that can be used to effectively address the structural weaknesses in the CEAS, it wants to build a 'solid legal, operational and practical framework for the Agency to be able to reinforce and complement the asylum and reception systems of

81 Ibid 7.
82 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A European Agenda on Migration, Brussels, 13.5.2015 COM(2015) 240 final, 12.
83 Council of the European Union, Outcome of the 3461st Council meeting 8065/16 (Council of EU Outcome 3641st council meeting).
84 EASO Regulation (n 70) Article 4.
85 Ibid Article 4 (e).
86 Proposal for a Regulation of the European Parliament and the Council on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010, COM/2016/0271 final - 2016/0131 (COD).

Member States.'[87] EASO will be re-named 'the European Union Agency for Asylum' as the enhanced mandate will transform EASO in a fully-fletched Agency

> which is capable of providing the necessary operational and technical assistance to Member States, increasing practical co-operation and information exchange among Member States, supporting a sustainable and fair distribution of applications for international protection, monitoring and assessing the implementation of the CEAS and the capacity of asylum and reception systems in Member States, and enabling convergence in the assessment of applications for international protection across the Union.[88]

A key task of the EU Agency will be the ensuring of a more harmonised assessment of international protection applications based on the EU recast Qualification Directive. The Agency will address the current differences in recognition rates by 'issuing detailed and regular guidelines, based on a common analysis, on the approach to be taken to asylum applicants from specific countries-of-origin, without prejudice to an individual examination of each application.'[89] In other words, the EU Agency for Asylum will not only analyse Country of Origin Information, but also interpret the information within the legal criteria set by the recast Qualification Directive.[90] The interpretation of the Country of Origin Information by the EU Agency for Asylum will be published as instructions to the EU Member States on how to interpret the situation in a country of origin in terms of international protection needs. A reporting system is going to be put in place that will facilitate the assessment whether Member States are taking the Agency's guidelines into account in practice.[91]

In anticipation of the new Agency for Asylum, in 2016, EASO was tasked with the creation of a senior-level policy network aimed at the development of EU-level policy based on the joint interpretation of COI reports that would be laid down in guidance notes delivered to Member States. These joint assessments were to be based on common Country of Origin Information and in accordance with the provisions of the asylum acquis. Afghanistan was selected for the pilot project under the Dutch presidency.[92] In June 2018, EASO published its first guidance note based on the common analysis of EASO COI reports on Afghanistan.[93]

EASO's country guidance is made up of two components: A 'guidance note' and a 'common analysis'. The 'guidance note' summarises the conclusions of the 'common analysis' and they should be read in conjunction. It covers potential actors of persecution or serious

87 Ibid.
88 Ibid.
89 Communication from the Commission COM/2016/0197 final (n 16) 13.
90 Or later the Qualification Regulation: See Proposal for a Regulation of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted and amending Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents COM/2016/0466 final - 2016/0223 (COD)
91 Ibid.; Proposal for the European Union Agency for Asylum (n 86) consideration (11), Article 10.
92 Council of EU Outcome 3641st council meeting (n 83) 11 – 12.
93 European Asylum Support Office (EASO), 'Country Guidance: Afghanistan, Guidance Note and Common Analysis' (June 2018) (EASO Country Guidance Afghanistan 2018); EASO has published Guidance notes on Nigeria (February 2019) and Iraq (June 2019) which are similarly structured as the June 2018 note on Afghanistan.

harm, particular profiles of people that may (depending on the individual circumstances of the case) qualify for refugee status or subsidiary protection, potential actors of protection as well as profiles of people that should be excluded from refugee status or subsidiary protection. The 'guidance note' discusses the applicable European protection standards before listing potentially eligible profiles. It also discusses examples of circumstances that may be relevant to consider in the assessment of an individual application for international protection.

The 'common analysis' provides a summary of the available EASO Country of Origin Information (fact-finding) and a risk analysis (legal assessment). For example, the Country of Origin Information analysed and summarised for the 'common analysis' in the 2019 country guidance on Afghanistan includes seven different EASO COI reports, namely, reports on individuals being targeted in the armed conflict,[94] key socio-economic indicators,[95] Afghan networks,[96] recruitment by armed groups,[97] society-based targeting[98] and two reports on the security situation.[99] The risk analysis entails a conclusion on the eligibility for protection of a certain profile and a listing of risk-impacting circumstances that should be taken into account when considering the protection needs of an individual asylum applicant. Therefore, the risk analysis is not an actual analysis but rather the reporting of the outcome of the legal assessment of the relevant information in the EASO COI reports in line with the criteria in the recast EU Qualification Directive.

EASO Country Guidance lacks real engagement with Country of Origin Information. There is no visible assessment of the evidence or assessment of the Country of Origin Information: The reasoning behind the fact-finding process at the basis of the 'common analysis' (why is certain information considered more or less important in the given context) and the legal assessment at the basis of the 'risk assessment' (why do the facts lead to the conclusion that certain profiles could be exposed to acts of such severe nature that they would amount to persecution) is notably absent from EASO's Country Guidance. Does current format of the guidance note and the common analysis make for a truly transparent, objective and reliable EASO Country Guidance that will be taken into account by EU Member States while deciding on individual asylum applications resulting in levelling recognition rates throughout the EU?

94 European Asylum Support Office (EASO), 'EASO Country of Origin Information Report: Afghanistan, Individuals targeted by armed actors in the conflict' (December 2017) (EASO COI report: Afghanistan, individuals targeted).

95 European Asylum Support Office (EASO), 'EASO Country of Origin Information Report: Afghanistan, Key socio-economic indicators, state protection, and mobility in Kabul City, Mazar-e Sharif, and Herat City' (April 2019) (EASO COI report: Afghanistan key socio-economic indicators).

96 European Asylum Support Office (EASO), 'EASO Country of Origin Information Report: Afghanistan, Networks' (February 2018) (EASO COI report: Afghanistan, networks).

97 European Asylum Support Office (EASO), 'EASO Country of Origin Information Report: Afghanistan, Recruitment by armed groups' (September 2016) (EASO COI report: Afghanistan, recruitment).

98 European Asylum Support Office (EASO), 'EASO Country of Origin Information Report: Afghanistan, Individuals targeted under societal and legal norms' (December 2017) (EASO COI report: Afghanistan, societal norms).

99 European Asylum Support Office (EASO), 'EASO Country of Origin Information Report: Afghanistan, Security situation' (December 2017); European Asylum Support Office (EASO), 'EASO Country of Origin Information Report: Afghanistan, Security Situation – Update' (May 2018); European Asylum Support Office (EASO), 'EASO Country of Origin Information Report: Afghanistan, Security Situation – Update' (June 2019).

4. Literature review

The following section locates this study within the current body of knowledge concerning Country of Origin Information as evidence in asylum procedures. [100] It is founded in the study of fact-finding and evidence assessment in asylum law. The literature shows a strong focus on evidence provided by applicants in the form of statements and associated credibility issues, leaving mostly unattended the assessment of Country of Origin Information.

4.1 Country of Origin Information as evidence

Country of Origin Information is not defined in literature nor in (European Union) legislation.[101] The definition in the ACCORD training manual is the most commonly used definition of Country of Origin Information. The ACCORD training manual defines Country of Origin Information as 'information which is used in procedures that assess claims to refugee status or other forms of international protection.'[102] According to ACCORD, Country of Origin Information concerns information on the human rights and security situation, the political situation and the legal framework, cultural aspects and societal attitudes, the humanitarian and economic situation, events and incidents as well as the geography in an applicant's countries of origin. Finally, the manual states that 'to qualify as Country of Origin Information it is essential that the source of the information has no vested interest in the outcome of the individual claim for international protection.'[103] The definition of Country of Origin Information put forward in the ACCORD training manual shows that information will only become Country of Origin Information through its use in the asylum procedure.

There are different uses for Country of Origin Information in the asylum procedure. First, Country of Origin Information is used in the examination of individual asylum applications. It provides the background information on a country of origin against which the external

100 For the purpose of this research, the following key words were used to find relevant academic literature in the electronic database of the library of the VU University Amsterdam: 'Country of origin information,' 'Country of origin information in asylum law,' 'Country of origin information in refugee law,' 'country information,' 'country information in asylum law,' 'country information in refugee law,' 'country reports,' 'country reports in asylum law,' 'country reports in refugee law,' 'country research in asylum law,' 'country research in refugee law,' 'fact-finding in asylum law,' 'fact-finding in refugee law,' 'evidence in asylum procedures,' 'evidence in refugee law,' 'evidence assessment in asylum law,' 'evidence assessment in refugee law,' 'credibility assessment,' 'credibility assessment in refugee law' and 'credibility assessment in asylum law.' These terms were also used to find studies by (inter)governmental organisations, international organisations and non-governmental organisations through the internet search engine Google. Any references to evidence assessment in asylum procedures in the literature found through these searches were studied as well. Most of the literature found through these searches focussed on credibility assessment. This literature was first studied for any specific references to country of origin information in relation to credibility assessment. Next, the literature was studied that specifically focused on evidentiary assessment of country of origin information in asylum decision making. In particular, it focused on the literature that studied COI quality standards and the application of those standards in practice.

101 Norma Fötsch, 'Landeninformatie en de Herziene Procedure Richtlijn' (2018) 8 *Asiel & Migratie Recht* 363 – 373, at 364.

102 ACCORD (n 2) 12.

103 Ibid.

consistency of an applicant statements can be measured to establish the credibility of the applicant.[104]

Michael Kagan notes the importance of Country of Origin Information beyond credibility assessment 'since it may independently establish or rebut a well-founded fear of being persecuted, and needs to be evaluated in its own right.'[105] This also follows from the two questions put forward by Henrik Zahle that are regularly used to explore the evidentiary aspects of a refugee case:

1. The question of 'risk-group existence'; With which probability or certainty may we assume that various groups in State X risk being persecuted?

2. The question of 'risk-group affiliation'; With which probability or certainty does the asylum applicant belong to a risk-group? [106]

The use of Country of Origin Information in the designation of a country of origin as safe, is a clear example of how Country of Origin Information can be independently used to answer the question of 'risk-group existence.' In 1992, Guy Goodwin-Gill wrote, in relation to the determination of a country of origin as safe, that the core issue was country information and 'the key element in moving to rational and defensible assessments of risk would be the standards for collecting and verifying that information.'[107] He noted that the criteria for verification of information should be given meaning and information from the front line and grass roots being made available through modern technology should be used in good faith.[108] Finally, Goodwin-Gill stated that,

> Both the effectiveness and the credibility of an information-based response will likely depend upon a concerted multilateral, regional or similar response, that includes States and international and nongovernmental organisations. Ideally, it should also be moderated internationally, for example, by UNHCR or other human rights machinery, on the basis of agreed standards. Only in this way, will generalised judgements as to the safe and the unsafe acquire weight.[109]

The literature, studies and NGO reports, studied for the purpose of this research, show that since 1992 certain standards regarding COI research have been agreed upon by the judiciary, UNHCR, NGOs and EU Member States. These standards form the basis for the analysis in this PhD which aims to establish how these standards or criteria for the verification of information are or could be given meaning by policy makers and decision makers in practice. Country of Origin Information is no independent field of study; It is not supported by a theoretical

104 UNHCR Handbook (n 1) para 42.
105 Michael Kagan, 'Is Truth in the Eye of the Beholder - Objective Credibility Assessment in Refugee Status Determination' (2003) 17 *Georgetown. Immigration Law Journal* 367 – 415, at 367.
106 Henrik Zahle, 'Competing Patterns for Evidentiary Assessment' chapter 2 in Gregor Noll, *Proof, Evidentiary Assessment and Credibility in Asylum Procedures* (Martinus Nijhoff Publishers, 2005).
107 Guy C. Goodwin-Gill, 'Safe Country? Says Who? (1992) 4 *International Journal of Refugee Law* 248 – 250, 249.
108 Ibid 250.
109 Ibid 250.

study and does not exist as a body of knowledge.[110] There are no limits to Country of Origin Information and it often includes information that was produced outside the context of refugee law.[111] Jo Pettit, Laura Townshead and Stephanie Huber note that information used as Country of Origin Information 'may have been prepared in academic, policy, or campaigning environments in which notions about fact and objectivity differ from those used in the legal context.' [112] Therefore, tourist travel guides and even a 'sex/cruising' website referencing gay bars may be considered sources of information, because there are no limits to what can be used, as solely their use in the asylum procedures defines them as Country of Origin Information.[113] However, one cannot emphasise enough the need to critically assess the (lack of) probative value of these kind of sources.[114] The importance of Country of Origin Information as evidence in the asylum procedure as well as the need to critically assess Country of Origin Information has been widely agreed upon.[115] However, due to the fact that Country of Origin Information is produced by a wide variety of sources with divergent mandates lacking a common approach to the production of Country of Origin Information, there is 'an uncomfortable level of uncertainty and inconsistency' with regard to the use of Country of Origin Information.[116]

4.2 Evidence assessment

One of the first authors to discuss evidentiary assessment was France Houle. In 1994, she studied the credibility and authoritativeness of the information produced by the Documentation Centre, the COI unit of the Immigration and Refugee Board of Canada. Houle mainly focussed on the structure, mandate, and methodology of the COI unit. However, she also discussed the use of Country of Origin Information by decision makers. She recognised the duty of decision makers to use reliable and current information but, interestingly, placed the responsibility on the COI unit to acquire and produce credible information that decision makers can confidently rely on.[117] She noted that members of the Canadian Immigration and Refugee Board often failed to properly weigh the documentary evidence against the applicants'

110 Jo Pettit, 'The Problem with Country of Origin Information (COI) in Refugee Status Determination' (2007) 13 *Immigration Law Digest* 13 in Robert Thomas, *Administrative Justice and Asylum Appeals: A Study of Tribunal Adjudication* (Bloomsbury Publishing PLC 2011) 168.

111 Jo Pettitt, Laurel Townhead, and Stephanie Huber, 'The Use of COI in the Refugee Status Determination Process in the UK: Looking Back, Reaching Forward' (2008) 25 *Refuge* 182 – 194, at 184.

112 Jo Pettitt, Laurel Townhead, Stephanie Huber, 'The Use of Country of Origin Information in Refugee Status Determination: Critical Perspectives' (Immigration Advisory Service 2009) 6.

113 Jenni Millbank, 'Imagining Otherness: Refugee Claims on the Basis of Sexuality in Canada and Australia' (2002) 26 *Melbourne University Law Review* 144 – 177, at 155; Catherine Dauvergne & Jenni Millbank, 'Crusingforsex.com' (2003) 28 *Alternative Law Journal* 176 – 181, at 178.; Arwen Swink, 'Queer Refuge: A Review of the Role of Country Condition Analysis in Asylum Adjudications for Members of Sexual Minorities' (2006) 29 *Hastings International and Comparative Law* Review 251 – 266, at 260.

114 Nicole LaViolette, 'Independent human rights documentation and sexual minorities: an ongoing challenge for the Canadian refugee determination process' (2009) 13 *The International Journal of Human Rights* 437 – 476, at 453.

115 Guy S Goodwin-Gill and Jane McAdam, *The Refugee in International Law* (3rd edn, Oxford University Press 2007) 545 – 548; Hathaway and Foster (n 7) 122 – 128; Robert Thomas, *Administrative Justice and Asylum Appeals: A Study of Tribunal Adjudication* (Bloomsbury Publishing PLC 2011) 167 – 195.

116 Pettitt, Townhead and Huber 2008 (n 111) 184.

117 France Houle, 'Credibility and Authoritativeness of Documentary Information in Determining Refugee Status: The Canadian Experience (1994) 6 *International Journal of Refugee* Law 6 – 33, at 20.

testimony.[118] According to Houle, the solution lied with the COI unit being more open about its processes so decision makers would be able to identify whether the authoritativeness of a source had been established and whether they can confidently rely on the information.[119] In 2004, Houle discussed the quality standards for Country of Origin Information more elaborately and concluded that asylum decisions in Canada rarely reflected a systematic assessment of evidence.[120] Houle noted that little had been written about the assessment of the weight to be attached to evidence or the assessment of the probative value of evidence, referring to both statements made by asylum applicants and publicly available Country of Origin Information.[121]

There is now an overwhelming amount of academic writing available on evidence assessment in asylum procedures. The focus of this body of work, however, is the assessment of the credibility of the statements of an asylum applicant, whether the account is truthful and plausible, and the burden and standard of proof associated with that credibility assessment.

4.2.1 Credibility assessment

According to Amanda Weston, a credibility assessment usually involves checking for internal consistency, external consistency and plausibility.[122] Jenni Millbank defines internal consistency as follows: 'Internal consistency is the extent to which the series of statements made by the applicant through the process sit comfortably with each other without contradiction.'[123] External consistency concerns the extent to which the statements made and evidence produced by an applicant are consistent with the background information on the situation in the country of origin. The level of external consistency will determine how plausible the statements of an applicant are and how plausible the well-founded fear might be.[124]

Gregor Noll was the first academic author to comprehensively address the issue of proof and credibility in his book on 'Proof, evidentiary assessment and credibility in asylum procedures.' Noll notes that,

> Today, an important fraction of applications are arguably decided on the basis of evidentiary assessment rather than on legal issues. In particular, the credibility of the applicant's account plays a central role. This moves decisions into a domain characterised by the discretion of the person who assesses the accounts and raises the issue where its limits are – or ought to be.[125]

118 Ibid 25 – 28.
119 Ibid 29.
120 France Houle, 'Le fonctionnement du Régime de Preuve Libre dans un Système Non-Expert: le Traitement Symptomatique des Preuves par La Section de la Protection du Réfugiés' (2004) 38 *La Revue Juridique* 263 – 358, at 338.
121 Ibid 340 – 342, 356 - 357.
122 Amanda Weston, 'A witness of truth" - credibility findings in asylum appeals' (1998) 12 *Immigration and Nationality Law and Practice* 87-9, at 88 in James Sweeney, 'Credibility, Proof and Refugee Law' (2009) 21 *International Journal of Refugee Law* 701.
123 Jenni Millbank, 'The Ring of Truth: A Case Study of Credibility Assessment in Particular Social Group Refugee Determinations' (2009) 21 *International Journal of Refugee Law* 1 – 34, at 11.
124 Ibid.
125 Gregor Noll, *Proof, Evidentiary Assessment and Credibility in Asylum Procedures* (Martinus Nijhoff Publishers 2005).

The use of Country of Origin Information in the credibility assessment is recognised as providing a second, far more general, account to counter the applicants' statements.[126] Yet, the evidentiary assessment of Country of Origin Information is not discussed at all in Noll's book. Other authors have also focused on the assessment of the internal consistency of an applicant's statements rather than on the external consistency of statements. [127] Additionally, there are the authors that have concentrated on the effects of lower and higher standards of proof applied to credibility assessments. For example, James Sweeney focused on the threshold for being 'credible' which, according to Sweeney, is different to 'being proven' and to 'being true.'[128] More recently, Hilary Evans Cameron argued that decision makers are often able to justify different conclusions on the same evidence depending on the level of burden and standard of proof applied by the Federal Court of Canada; *Either* a low threshold giving the benefit of the doubt in a risk assessment that resolves doubt in favour of an applicant *or* a higher threshold in line with the logic of regular civil law proceedings that resolves doubt at the expense of an applicant.[129]

The focus on a methodical approach to credibility assessment is not surprising given the fact that many asylum applications are decided on the internal inconsistency of applicants' statements and the assessment of the external consistency (plausibility) is based on assumption or speculation rather than actual Country of Origin Information.[130] Or as James Sweeney put it: 'So called findings of fact and credibility tend to be rooted in an isolated examination of past facts rather than linking them to the proof of prospective risk.'[131] Noll rightly warns that 'if evidentiary assessment provides a back door to unfettered discretion' it could risk harmonisation efforts.[132]

However, one should not lose sight of the role of Country of Origin Information and the potential contribution of a systematic approach to Country of Origin Information to harmonisation of, and consistency in, decision-making. Robert Thomas notes that Country of Origin Information cannot remedy the problems concerning credibility assessment due to the highly contested nature of country evidence reports.[133] Indeed, the many short-

126 Ibid 4.

127 Millbank 2009 (n 123); Jane Herlihy, Kate Gleeson, Stuart Turner, 'What Assumptions about Human Behaviour Underlie Asylum Judgments?' (2010) 22 *International Journal of Refugee Law* 351 – 366; Debra Singer, 'Falling at Each Hurdle: Assessing the Credibility of Women's Asylum Claims in Europe' in Efrat Arbel, Catherine Dauvergne, and Jenni Millbank, *Gender in Refugee Law: From the Margins to the Centre* (Routledge, 2014) 98 – 115; Jeanette L. Schroeder, 'The Vulnerability of Asylum Adjudications to Subconscious Cultural Biases: Demanding American Narrative Norms' (2017) 97 *Boston University Law Review* 315 – 348; Rebecca Dowd, Jill Hunter, Belinda Liddell, Jane McAdam, Angela Nickerson, and Richard Bryant, 'Filling Gaps and Verifying Facts: Assumptions and Credibility Assessment in the Australian Refugee Review Tribunal' (2018) 30 *International Journal of Refugee Law* 71 – 103.

128 Sweeney 2009 (n 122) 711; See, for example, also Brian Gorlick, 'Common Burdens and Standards: Legal Elements in Assessing Claims to Refugee Status' (2003) 15 *International Journal of Refugee Law* 357 – 378.

129 Hilary Evans Cameron, *Refugee Law's Fact-Finding Crisis: Truth, Risk, and Wrong Mistakes* (CUP 2018).

130 Millbank 2009 (n 123) 16 – 22, the author discusses in particular the difficulties of plausibility assessments based on assumption in sexual orientation claims; Herlihy, Gleeson and Turner 2010 (n 127); Schroeder 2017 (n 127); Dowd, Hunter, Liddell, McAdam, Nickerson and Bryant 2018 (n 127).

131 James Sweeney, 'The Lure of 'Facts' in Asylum Appeals: Critiquing the Practice of Judges' (2007) 19 – 35, at 25, in Steven R. Smith (ed.), *Applying Theory to Policy and Practice: Issues for Critical Reflection* (Ashgate, 2007).

132 Noll 2005 (n 125) 1 – 2.

133 Robert Thomas, 'Assessing Credibility of Asylum Claims: EU and UK Approaches Examined' (2006) 8 *European Journal of Migration and Law* 79 – 96, at 85.

comings in COI reports have been documented in national studies published by scholars,[134] national asylum authorities,[135] advisory committees to the national authorities,[136] and non-governmental organisations.[137] These studies identify problems such as inconsistent use of information, selective use of information due to potential political biases, use of out-of-date information, lack of availability or inclusion of relevant information,[138] lack of inclusion of contradictory information, financial and time constraints. A methodical approach to, or a proper and transparent assessment of, Country of Origin Information by decision makers, judges and policy makers could go a long way in helping to overcome the controversy surrounding COI reports. This would allow Country of Origin Information to reach its full potential in credibility assessment and beyond.

4.2.2 Country of Origin Information assessment

Country of Origin Information is generally discussed in broad terms in relation to relevant evidence in the determination of a well-founded fear of persecution or a real risk at serious harm. For example, academic authors Guy Goodwin-Gill and Jane McAdam[139] and James

134 Academic literature appears to focus on the lack of available relevant information in relation to gender-based claims, see for example, LaViolette 2009 (n 114); Nicole LaViolette, 'UNHCR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity: A Critical Commentary' (2010) 22 *International Journal of Refugee Law* 173 – 208,at 206; Singer 2014 (n 127) 98 – 115.;Younous Arbaoui, *Deux Poids, deux Mesures: A Critical Frame Analysis of the Dutch Debate on Family-related Asylum Claims* (Vrije Universiteit Amsterdam, 2019) 113 – 117. Regarding UK Home Office reports, see Natasha Carver (Ed.) 'Home Office Country Reports: An Analysis' (Immigration Advisory Service 2004); Sweeney 2007 (n 131) 25 – 26; Regarding EASO COI reports, see Hiske van den Bergh, 'Landeninformatie in een Europees Perspectief – de Rol van EASO' (2014) 4 *Asiel & Migratierecht* 216 – 223.

135 E.g., B. Morgan, V. Gelsthorpe., H. Crawley, and A. Jones, 'Country of origin information: a user and content evaluation' (UK Home Office Research Study 271) (2003).

136 E.g., Netherlands, Advies Commissie Vreemdelingenzaken, 'Transparant en Toetsbaar: Een Advies over Landeninformatie in het Vreemdelingenbeleid' (July 2006); National Ombudsman, 'De Geloofwaardigheid van Ambtsberichten: Hoe Asielverhalen worden bevestigd of ontkracht' (September 2007); The United Kingdom, John Vine, Independent Chief Inspector of Borders and Immigration, *The use of country of origin information in deciding asylum applications: A thematic inspection October 2010 – May 2011* (July 2011); David Bolt, Independent Chief Inspector of Borders and Immigration, *An Inspection of the Home Office's Production and Use of Country of Origin Information April – August 2017* (January 2018).

137 E.g., Belgium, Belgisch Comité voor Hulp aan Vluchtelingen/Comité Belge D'Aide Aux refugiés, 'Is de Vrees Gegrond? Het Gebruik en de Toepassing van Landeninformatie in de Asielaanvraag, Analyse van de Toepassing in België van de Europese Principes en Regels met Betrekking tot COI' (June 2011); Sweden: Helga Flärd, 'The Use, Misuse, and Non-use of Country of Origin Information in the Swedish Asylum Process (the Swedish Refugee Advice Center 2007); The United Kingdom: Nick Carver (Ed.) 'Home Office Country Assessments: An Analysis' (Immigration Advisory Service 2003); Bethany Collier, 'Country of Origin Information and Women: Researching gender and persecution in the context of Asylum and Human Rights Claims' (Asylum Aid 2007); Pettitt, Townhead and Huber 2009 (n 112) 61 – 85: Natasha Tsangarides, 'The Refugee Roulette: The Role of Country Information in Refugee Status Determination' (Immigration Advisory Service 2010); Asylum Research Center Foundation & Dutch Council for Refugees, 'Comments on the EASO Country of Origin Information Report: Eritrea National Service, Exit and Return (September 2019); Asylum Research Center Foundation & Dutch Council for Refugees, 'Comments on the EASO Country of Origin Information Report: Pakistan: Security Situation (October 2019).

138 Lack of information appears to be a particular problem with regard to gender issues such as forced marriage, sexual orientation, etc.; Collier 2007 (n 137); LaViolette 2009 (n 114); LaViolette 2010 (n 134) 206; Singer 2014 (n 127); Arbaoui 2019 (n 134).

139 Goodwin-Gill and McAdam 2007 (n 115) 545 – 548.

Hathaway and Michelle Foster[140] discuss the importance of accurate, in-depth, up-to-date, and credible Country of Origin Information as the essential foundations for good decisions in their books. They discuss the function of Country of Origin Information in relation to the statements and evidence produced by an applicant, the need to assess Country of Origin Information, and touch upon some of the more obvious standards, such as the use of different kind of sources, the fact that information should be up-to-date, and procedural guarantees to ensure a meaningful defence by an applicant. Thomas adds to their discussion by identifying several problems with regard to the application of these standards, such as the lack of scrutiny of Country of Origin Information by its users to establish whether it meets COI standards,[141] and shares some of his thoughts on judges doing their own COI research and/or specialising in particular countries.[142] Mostly, these authors focus on, and refer to, landmark case-law and how decision makers *should* deal with Country of Origin Information. There is no in-depth analysis on how these standards are being given meaning in practice or if they are even been given meaning at all.

The studies that have examined more thoroughly how COI quality standards are being applied in practice, have focused in particular on the use of Country of Origin Information in gender-related claims. For example, on the basis of an examination of decisions on sexuality based claims between 1994 and 2000, Catherine Dauvergne and Jenni Millbank conclude that in particular the Australian Tribunal used Country of Origin Information that was not independent, relevant or even gender appropriate, that was misrepresented, taken out of context, and finally, not weighed.[143]Arwen Swink built on Dauvergne and Millbanks' research in 2006 and observes that two asylum judges will often review conditions for a single country in a radically different fashion depending on the asylum adjudicator's choice of independent sources and assessment of the relative weight of those sources.[144] Nicole LaViolette also notes that different conclusions may be drawn by decision makers from the same Country of Origin Information.[145] These observations are relevant and go to the core of the problem with regard to the lack of critical assessment of Country of Origin Information and its probative value by users.

There are very few authors that have written about Country of Origin Information outside the context gender-related claims. In 2009, Katayoun Sadeghi notes that the European Court of Human Rights' uncritical reliance on secondary sources in an, *ad hoc*, inconsistent manner jeopardises the legitimacy of the Court's judgements. She suggested the Court should adopt less discretionary evidentiary standards.[146] Finally, in 2012, Robert Haines provides a general overview of the way in which Country of Origin Information has been used and assessed in the New Zealand refugee status determination system at the appellate level. He discusses a wide range of issues including, in his opinion, the limitations of consistent interpretation of Country of Origin Information through Country Guidance Determinations.[147] He briefly

140 Hathaway and Foster (n 7) 122 – 128.
141 Thomas 2011 (n 115).
142 Ibid., 168 – 171.
143 Dauvergne and Millibank 2003 (n 113).
144 Swink 2006 (n 113) 256.
145 LaViolette 2009 (n 114) 457; See also, Thomas 2011 (n 110) 170.
146 Katayoun C. Sadeghi, 'The European Court of Human Rights: The Problematic Nature of the Court's Reliance on Secondary Sources for Fact-Finding' (2009) 25 *Connecticut Journal of International Law* 127 – 151.
147 Rodger Haines, Country Evidence and Evidence Assessment in New Zealand, Chapter 8, in Satvinder Juss (ed), *Ashgate Research Companion to Migration Law, Theory and Policy* (Ashgate, 2012) 173 – 180.

touches upon the assessment of the credibility of Country of Origin Information.[148] But as Haines himself noted 'in the absence of qualitative research into how Country of Origin Information is used by the major actors in the New Zealand refugee and protection system,' his observations and comments must necessarily be seen as 'a largely subjective introduction to the issue of Country of Origin Information and evidence assessment in the New Zealand refugee and protection system.'[149]

Beyond academic literature, the use of Country of Origin Information by decision makers has attracted limited attention from UNHCR and NGO's. The 2010 study conducted by UNHCR on the application of the key provisions of the EU Asylum Procedures Directive supports the observations that the use of Country of Origin Information is only limited and inconsistent.[150] Moreover, the Immigration and Asylum Service (IAS) has, for example, published research on the use of Country of Origin Information in so-called 'Reasons for Refusal Letters,' asylum appeals and Operational Guidance Notes.[151] It is one of few studies looking into the way Country of Origin Information is used in decision making, both at the administrative and first instance level. The study of the 'Reasons for Refusal Letters' found inconsistent and under use of Country of Origin Information as well as substantial evidence of poor practice in the use of Country of Origin Information by decision makers.[152] The study on the use of (unreported) asylum determinations demonstrated that Country of Origin Information was not dealt with in a uniform manner by immigration judges. It showed a lack of transparency regarding the information put before the Tribunal, how this information was weighed and balanced.[153] A similar study has been undertaken by the Swedish Refugee Advice Centre. The study questioned members of the Migration Board and legal representatives on their use of COI. It focused on the general importance of Country of Origin Information, whether they used Country of Origin Information, etc.[154] These studies are mostly descriptive and lack a proper analysis with regard to the findings.

4.3 The social sciences and COI research

During the course of this research, some important contributions to the academic research on Country of Origin Information from the point of view of the social sciences have been published. This body of research approaches Country of Origin Information from a very distinct angle to the legal profession with some authors specifically focusing on the divergent practices of establishing facts in the social sciences.

Anthropologist Anthony Good has written on the use of Country of Origin Information in

148 Ibid 184.
149 Ibid 158.
150 UN High Commissioner for Refugees (UNHCR), 'Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice - Key Findings and Recommendations' (March 2010) 29 – 31; The study showed that some Member States systematically failed to refer to any country of origin information, while others only minimally referred to country of origin information or only generally referred to country of origin information without specific reference to reports and/or sources. Some Member States developed good practices, where they used increasingly detailed references, however, these practices remained inconsistent. Finally, some Member States relied on limited sources, primarily state sponsored sources.
151 Pettitt, Townhead and Huber 2009 (n 112); See also Pettitt, Townhead and Huber 2008 (n 111).
152 Ibid., 8 – 35.
153 Ibid., 36 – 60.
154 Flärd 2007 (n 137).

the British asylum procedure from an anthropological perspective, with a particular focus on expert evidence.[155] In 2013, Good teamed up with Sociologist Robert Gibb to exam the place of Country of Origin Information in the refugee status determination procedures in Britain and France.[156] The article examines differences and similarities of the use of Country of Origin Information in the administrative and judicial proceedings of the two asylum systems. The authors focus on the sources of Country of Origin Information used, consistency in decision-making,[157] the (lack of) implementation of the EU Common Guidelines on Processing COI,[158] and fact-finding mission reports. [159] Good and Gibb note that techniques for the assessment of factual evidence do not receive enough attention in law schools and academic writers and differs from the approach to evidence adopted by social scientists.

According to Good and Gibb, 'the assessment of factual evidence by judges tends to reflect "a tradition of relatively complacent common-sense empiricism" that devotes relatively little attention to the problems and issues involved in the collection, processing, presentation, and weighing of factual information.'[160] The undertheorised legal approaches to factual evidence are likely to be especially problematic in asylum adjudications because of the centrality of the asylum applicant's narrative. Furthermore, Good points out that the notion of objectivity means something different for lawyers than for social scientists. Rather than a metaphysical concept, for lawyers, objectivity is the subjectivity of the Reasonable Man.[161] It is an uncomfortable fact that Country of Origin Information,

> [L]ike all other discursive forms of knowledge about the complexities of the real world, does not lend itself to the binary reductionism required by legal decision making, with its application of the general to the particular and its collapsing of probability into certainty. Law is positivistic by necessity, whereas Country of Origin Information, by its very nature, cannot be.[162]

Van der Kist, Dijselbloem en De Goede put forward a similar argument in their 2018 article on the knowledge politics of Country of Origin Information, that is that COI units put Country of Origin Information in a form that will lend itself to the requirements of legal

155 E.g. Anthony Good, 'Expert Evidence in Asylum and Human Rights Appeals: An Expert's view' (2004) 16(3) *International Journal for Refugee Law* 358 – 380; Anthony Good, *Anthropology and Expertise in the Asylum Courts,* (London and New York: Routledge-Cavendish 2007); Anthony Good and Tobias Kelly, *Expert Country Evidence in Asylum and Immigration Cases in the United Kingdom: Best Practice Guide* (University of Edinburgh 2013).

156 Robert Gibb and Anthony Good, 'Do the Facts Speak for Themselves? Country of Origin Information in the French and British Refugee Determination Procedures' (2013) 25 *International Journal for Refugee Law* 291 – 322.

157 Ibid, while discussing country of origin information and, Gibb and Good look into the benefits of the country guidance system that has been developed in the UK and that does not have an equivalent in France.

158 Ibid 312 – 315.

159 Ibid 315 – 320.

160 Ibid 321; Good 2007 (n 155) 138.

161 Good 2007 (n 155) 138.

162 Gibb and Good (n 156) 322: See also, Anthony Good, 'Anthropological Evidence and Country of Origin Information in British Asylum Courts,' chapter 5 in *Adjudicating Refugee and Asylum Status, The Role of Witness, Expertise, and Testimony*, Edited by Benjamin N. Lawrance, (Rochester Institute of Technology, New York, Galya Ruffer, Northwestern University, Illinois, Cambridge University Press 2014); Sweeney 2007 (n 131) 30 – 31.

decision-making.[163] The authors view the work of COI units from a political and sociological perspective with a focus on the relation between knowledge and decisions. They suggest a close connection between the gathering and processing of information about countries of origin on the one hand, and political authority to make decisions on the admissibility and deportability of refugee populations, on the other. Van der Kist, Dijselbloem and De Goede argue that COI units do not provide objective information as they hold a special position in between research and policy decision. Although, COI units use social scientific methods and protocols, their objective is not to test theories or produce scientific facts but rather deliver valid grounds in support of decisions on asylum applications. Van der Kist, Dijselbloem and De Goede state that 'the work of COI units seeks to reduce the fundamentally undecidable ethical decision of granting (or withholding) asylum to a calculative procedure.'[164] The authors suggest that there are three phases to the emergent nature of Country of Origin Information: investigation, concordance and consolidation. The pauses or 'gaps of undecidability'[165] in these stages can be understood as emerging 'mediating moments' in which the bridge between facts, norms and decisions is crossed. Van der Kist, Dijselbloem and De Goede argue that COI units shorten this bridge between knowledge and decision making, which allows for the involvement of all kinds of possibly conflicting forms of expertise and expert views as well as arbitrariness.[166]

Julia Dahlvik articulates this argument from the point of view of the decision-maker in the Austrian asylum procedure.[167] She provides different examples, based on interviews, of how decision makers indirectly gain power over what is considered a fact, through the formulation of questions sent to the COI unit, the inclusion of only certain information in the interview transcript, and the different aspects influencing credibility findings. Dahlvik states that her findings 'support the idea of construction work in the asylum procedure, including the argument that credibility is actively constructed rather than passively discovered.'[168]

4.4 This research's contribution

The review of the literature showed that scholars, who study the assessment of evidence in asylum procedures, have focused on credibility assessment. More specifically, they have focused on the assessment of the internal consistency and plausibility of the statements of asylum applicants. The few authors that have examined the assessment of Country of Origin Information by decision makers have made remarkable observations on how decision makers can take widely different decisions based on the same Country of Origin Information depending on choice of sources and assessment of the relative weight of those sources. However, the research underlying the observations is limited to claims based on sexual orientation or gender-identity. The research by Dauvergne, Millbank and Swink is also based

163 Jasper van der Kist, Huub Dijselbloem and Marieke De Goede,' In the Shadow of Asylum Decision-making: The Knowledge Politics of Country of Origin Information' (2019) 13(1) *International Political Sociology* 68 -85.
164 Ibid 4 – 5.
165 Ibid 5.
166 Ibid., 13 – 14.
167 See, for example, also Julia Dahlvik, 'Asylum as Construction Work: Theorizing Administrative Practices' (2017) 5 *Migration studies* 3, 369 – 388.
168 Ibid 379: See, for example, also Livia Johannesson, 'Performing Credibility: Assesments of Asylum Claims in Swedish Migration Courts' (2012) 35(3)/138 *Retfærd. Nordisk Juridisk Tidsskrift*, 69–84.

on mostly older decisions when the professionalisation of Country of Origin Information was still in its early stages (before 2000).

Moreover, whereas Dauvergne and Millbank do analyse *how* the information was assessed and *why* the information was given probative value, Swink's observations are based on comparative research that mostly just describes *what* Country of Origin Information was used. LaViolette's research covers an array of issues in relation to sexual minorities – the absence of relevant information, the evolution of Country of Origin Information, the impact of that information on certain legal issues, what information can be relevant and should be used – but does not focus on the issue of the assessment of Country of Origin Information by the decision makers. The *how* information is assessed and *why* substantial weight is attached to particular information would provide an explanation for the fact that policy makers and decision makers may assess the situation in a country of origin differently. However, this has not been the focus of any further in-depth research in legal scholarship.

Sadeghi, in her analysis of the ECtHR's use of secondary sources, touches upon the evidentiary standards of the Court. Her observations regarding the uncritical and inconsistent reliance on secondary sources by the ECtHR are certainly relevant. However, the observations are based on an examination of two cases regarding the expulsion of an applicant to Iran and do not take into account the evidentiary standard set by the Court in its wider case law.[169]

This research will look into evidentiary standards or the *how* and *why* more thoroughly: The aim is to map out the COI quality standards set by four key institutions and how these standards are being applied (given meaning) in practice in order to put forward good practices that could contribute to overcoming the different conclusions regarding the conditions in a country of origin. Generally speaking, decision makers provide reasons for their conclusions on the credibility of an applicant, the process of assessing an applicant's credibility is visible. This transparent credibility assessment allows for an analysis of the conclusions. However, with regard to the process of assessing Country of Origin Information by policy makers and decision makers there is 'an uncomfortable level of uncertainty and inconsistency.'[170] It is this process that is the focus of this research.

The level of standard of proof, or the manner in which inferences are drawn from Country of Origin Information, is outside the scope of this PhD. For the purpose of this research, it is not relevant whether a policy-maker assesses risk taking into consideration all the facts, even facts that (s)he considers probably not true,[171] or if a policy-maker only takes into consideration facts that (s)he considers probably true.[172] It is only relevant whether the reasoning itself and the conclusions as to the facts are sufficiently supported in Country of Origin Information, regardless of whatever standard of proof is being applied; *Why* are these facts considered true, probably true, probably not true or not true? The research aims to contribute to the literature on evidence assessment in asylum procedures by focussing solely on the process of assessing Country of Origin Information. The objective is to put forward a common and more

169 Sadeghi 2009 (n 146) 129.

170 Pettitt, Townhead and Huber 2008 (n 111) 184.

171 Ibid 192 – 197.

172 See, for example, Evans Cameron 2018 (n 129) 185 – 187, 192 – 197 who discusses the difference between abductive, deductive and inductive reasoning with regard to credibility assessment; See also Houle 2004 (n 120), the author discusses the latent presumption of bad faith and the latent presumption of objectivity of publicly available documents in the Canadian context resulting in negative credibility findings due to simple contrasting of an applicant statements and documentary evidence.

systematic approach to the use of Country of Origin Information, in accordance with the COI quality standards set by ACCORD, that is crucial to overcome the problems with intuitive evaluation of Country of Origin Information by individual policy makers or decision makers and is the basis for a more transparent establishment of facts, including more transparency regarding the inferences drawn during this process.

Finally, the relevant literature in the social sciences identifies a serious problem regarding the processing of Country of Origin Information. However, it is a theoretical discussion that does not provide any concrete tools that could be used by either COI researchers in COI units or policy makers and decision makers to align the approach to the assessment of factual evidence in the legal profession with that in the social sciences. There is no original, systematic, research of written policy and decisions underlying the theories showing where COI researchers, policy makers or decision makers exactly go wrong, according to the approach to fact-finding in the social sciences. Liza Schuster appears to have done such research on UK Home Office 'Reasons for Refusal Letters' regarding asylum applicants from Afghanistan. However, in her 2018 article on the fatal flaws in the UK asylum decision-making she supports her arguments with her own expert knowledge on Afghanistan as a country expert instead of actually analysing how Country of Origin Information is assessed and how the probative value of information is weighed by the decision makers of the UK Home Office.[173]

Like legal academic writers, writers in the social sciences also focus on either the work of COI researchers in COI units or the credibility assessment by decision makers[174] rather than on the actual assessment of Country of Origin Information in establishing the facts. This PhD will systematically analyse how Country of Origin Information is used in practice by several key institutions that have an impact on refugee recognition in Europe. The research will contribute by providing findings that will enable social scientists to test their theories more thoroughly, pinpoint in more detail where policy makers and decision makers should assess the factual evidence differently and suggest concrete tools on how to deal with the uncertain character of Country of Origin Information to improve the fact-finding process that would translate to the legal setting in which the asylum procedure takes place.

5. Focus of the research

This PhD focuses on guidance for decision-making in leading jurisprudence and policy guidelines in which factual evidence on the security and human rights situation in a country of origin, solely in the form of Country of Origin Information without the interference of individual circumstances, is assessed in light of the criteria for international protection. Guidance for decision-making is a measure used to improve consistency in decision-making by limiting individual decision makers' authority to interpret Country of Origin Information

173 Liza Schuster, 'Fatal Flaws in the UK Asylum Decision-Making System: An Analysis of Home Office Refusal Letters' (2018) 44 *Journal of Ethnic and Migration Studies* 1 – 17.

174 See, for example, also Olga Jubany, 'Constructing Truths in a Culture of Disbelief: Understanding Screening from Within' (2011) 26 *International Sociology* 74 – 94.

independently. Guidance for decision-making can be produced in the form of jurisprudence, through leading judgements or Country Guidance Determinations, and policy guidelines.

The following section will first set out the research questions. The first set of questions relate to the research that has been done for the individual chapters of this PhD. The third question sees to the manuscript as a whole and the overall analysis of the findings in each of the chapters. The second part of this section will provide the normative framework for this analysis.

5.1. Research questions

Guidance for decision-making aims to improve consistency in asylum decision-making purely from the perspective of the general circumstances or the situation of certain categories of people in a country of origin. It puts forward profiles of people that may be eligible for refugee status or subsidiary protection and provide specific circumstances that may be relevant for the decision maker to take into consideration while determining an individual's future risk in his or her country of origin. The PhD examines the assessment of Country of Origin Information at the basis of guidance for decision-making provided by several institutions that are involved in asylum decision-making at different levels, namely a supranational court, a national court, a UN Agency and national administrations. It examines the process in which Country of Origin Information is collected, analysed and assessed for its value (fact-finding) to come to sound guidance on the protection needs of a particular group of people (legal assessment) useful for players involved in the individual decision-making process.

First, this PhD specifically studies which COI quality standards are set and how these standards are applied to the Country of Origin Information used in guidance for decision-making in leading jurisprudence and policy guidelines to come to a balanced conclusion on the protection needs of people coming from a specific country of origin;

- What COI quality standard are set by reputable courts, such as the European Court of Human Rights and the Immigration and Asylum Chamber of the United Kingdom Upper Tribunal, by the UN agency for refugees (UNHCR), and by national policy makers in particular (former) EU Member States? And,

- How are these COI quality standards applied in practice in guidance for decision-making found in decisions by the European Court of Human Rights, in Country Guidance Determinations by the UK Upper Tribunal, in UNHCR Eligibility Guidelines, and in national policies regarding Safe Countries of Origin?

Second, the research aims to uncover good practices regarding the evidentiary assessment of Country of Origin Information. For this purpose, all the findings of the individual articles will be brought together in chapter 6. This final chapter will examine how the different COI quality standards relate to each other. Moreover, the different standards and practices will be compared and set against the COI quality standards in the ACCORD training manual. The comparison will serve as the basis for recommendations on how the evidentiary assessment of Country of Origin Information can be improved and better reflected in decisions and guidance for decision-making. The third research question is therefore:

- What good practices are observed by the European Court of Human Rights, the UK Upper Tribunal, UNHCR and/or the (former) EU Member States that can form the basis for recommendations on how the evidentiary assessment of Country of Origin Information can be improved and better reflected in considerations concerning international protections needs?

Chapter 6 will formulate recommendations for the ECtHR, the UK Upper Tribunal and UNHCR. Moreover, any recommendations regarding the EU common COI quality standards in the EASO COI Report Methodology concern the use of Country of Origin Information in all EU Member States. Therefore, chapter 6 will also formulate a specific set of recommendations regarding the application of the common standards on Country of Origin Information at the level of the European Union.

5.2. COI Research versus the use of Country of Origin Information in legal assessments

Before discussing the specific standards that have been relied on for the purpose of this research, the difference between COI research and the use of Country of Origin Information in the fact-finding process and legal assessment of the need for international protection should be addressed.

Country of Origin Information is essential in the determination of who is in need of, and should be accorded, international protection. According to UNHCR, the need for Country of Origin Information flows directly from the definition of a refugee in the 1951 Refugee Convention; 'States must determine whether claims are well-founded, that is, sufficiently established on the facts or on the available evidence.'[175] A decision maker should view an application for international protection in the context of the relevant background information.[176] In general, Country of Origin Information is not determinative of a claim for international protection. Its use is in establishing the existence of a *possible* risk.[177] Thus, Country of Origin Information should be weighed against the evidence put forward by an applicant in support of his or her claim to establish whether there is a *real* risk upon return to the country of origin. Depending on the credibility of the applicant's evidence, a decision maker may give greater weight to the Country of Origin Information if s/he finds it more persuasive.[178] Moreover, Country of Origin Information *is* determinative in guidance for decision-making in which factual evidence, solely in the form of Country of Origin Information without the interference of individual circumstances, is assessed in light of the criteria for international protection.

What separates COI research from the use of Country of Origin Information in guidance for decision-making or actual decision-making is the influence of the statements and documents put forward by the applicant and the future risk assessment in light of the criteria for international protection needs. In short, COI research is about the collection

175 UNHCR COI Policy Paper (n 19) para 4.
176 UNHCR Handbook (n 1) para 42.
177 Hathaway and Foster (n 7) 136.
178 Ibid 122.

and processing of information that can serve to support a decision maker, judge or policy maker in assessing a need for international protection. Whereas, the use of Country of Origin Information by decision makers, judges and policy makers concerns the assessment of the evidentiary value of the information in light of the criteria for international protection. This PhD specifically focuses on *how* probative value of Country of Origin Information is assessed in guidance for decision-making in leading jurisprudence and policy guidelines.

According to UNHCR, the processing and the production of Country of Origin Information should preferably be kept independent from the decision-making and policy-making process to ensure impartial and objective COI research.[179] UNHCR states that the authority and respect that Country of Origin Information enjoys, provides credibility to the entire asylum procedure. For Country of Origin Information to be authoritative the COI provider should be independent both in principle and in practice. Therefore, the COI provider should adhere to COI quality standards while researching publicly available sources of Country of Origin Information as well as be factually independent through its legal status. UNHCR states that 'practice shows that a separate budget coupled with administrative independence from the decision-making authority are the most effective avenues to dispel perceptions of bias.'[180]

Moreover, European Union legislation also appears to suggest a clear separation between COI research and decision-making. For example, article 10(3)(b) recast Asylum Procedures Directive requires Member States to obtain, and make available to the personnel responsible for examining applications and taking decisions, precise and up-to-date information from various sources to establish all the relevant facts that should be taken into account. This article puts forward certain COI quality standards; Information needs to be precise, up-to-date and should come from various sources. However, the quality standards appear to be aimed at the Member State obtaining the information rather than the person that examines an application and takes the decision.

Finally, the EU Common Guidelines for Processing COI also note that the criteria for impartiality and objectivity should be understood to implying 'that, whenever possible, the processing and the production of Country of Origin Information should be kept independent from the decision making process and policy making.'[181] The ACCORD training manual notes that COI research, though conducted within the context of questions that are informed by legal issues arising from the determination of a need for international protection, cannot substitute the obligation of the decision maker to weigh all the available evidence and draw legal conclusions from all the uncovered facts including an applicant statements.[182]

Impartial and objective COI research that produces reliable COI products is important. However, an appropriate, individual, objective and impartial examination of a need for international protection in accordance with article 10(3)(a) recast EU Asylum Procedures Directive, requires a thorough evaluation of the Country of Origin Information to determine the conclusions that can reasonably be drawn from the information with regard the facts as well as the legal assessment. It is just as important for a decision maker, judge and/or policy maker to be able to evaluate the quality of a COI product (and its limitations) to be able to determine the extent to which the product can be relied on in the assessment of a need for

179 ACCORD Training manual (n 2) 36; UNHCR COI Policy Paper (n 19) 17 – 18 and EASO COI Report Methodology 2019 (n 72) 7, 17, 27.
180 UNHCR COI Policy Paper (n 19) 17 – 18.
181 EU Common Guidelines for Processing COI (n 61) 2.
182 ACCORD Training manual (n 2) 6.

international protection. A decision maker, judge or policy maker may not blindly trust the Country of Origin Information made available to him or her. No matter the producer or publisher, each COI product should be assessed on its own merits. Therefore, it is argued here that the same COI quality standards applicable to COI research, should also govern the manner in which Country of Origin Information is weighed and balanced in guidance for decision-making and decisions to guarantee guidance for decision-making and decisions that are visibly and verifiably based on reliable Country of Origin Information.

First, in practice, COI research informs the process of fact-finding and legal assessment done by decision makers, judges and policy makers.[183] Both functions cannot be seen as completely separate from each other, not only because in several countries the same person is responsible for researching Country of Origin Information and deciding on the need for international protection due to a lack of an independent COI unit. Depending on the format of a COI product, it can be a slippery slope from COI research to the fact-finding done by decision makers, judges and policy makers in light of the criteria for international protection.

For example, EASO has introduced 'COI conclusions' into its COI reports. According to EASO, 'a COI conclusion aims to highlight main patterns in the analysed and validated information in order to assist the target users to draw informed conclusions relevant to their tasks.'[184] EASO states that it is a reasoned evaluation based on the combined information of sources consulted in the research process that should not include legal assessments, policy or decision guidance.[185] As an example of a COI conclusion, EASO provides: 'From the information, EASO concludes that recruitment of fighters by the insurgents usually happens via local community, military or religious structures.' EASO explains that it considers this a COI conclusion 'because EASO deducts this general pattern from the different examples found in sources, because there is no contradicting information and none of the different pieces of information describe the pattern as such. Therefore, it constitutes a new piece of information.'[186] The COI conclusion does not include a legal assessment. However, it certainly touches upon the fact-finding that lies at the core of the work of a decision maker, judge or a policy maker. The determination of who is responsible for the recruitment of fighters may be important information for the establishment of an agent of persecution. It is information that could possibly have a real bearing on the issues before a decision maker, and therefore, impact the future risk assessment. A decision maker, judge and policy maker should ensure him- or herself of the quality of the information at the basis of the main patterns that are highlighted in the EASO COI reports to establish the evidentiary value of this new piece of information. The decision maker, judge and policy maker should also familiarise him- or herself with, for example, the quality of the information that possibly contradicts the existence of a pattern or shows exceptions to the pattern to assure the collection of *all* relevant facts.

Secondly, decision makers, judges and policy makers cannot simply rely on the authoritativeness of a national COI unit or EASO. As mentioned in section 4.2.1, the shortcomings in COI reports have been widely documented. The reliability of the information in COI reports by independent COI units is therefore not a given. At the same time, some COI units are given too much authority based on their independent status. As a result, their COI products are given too much weight and

183 Damian Rosset, *Producing Knowledge and Legitimacy: Country of Origin Information in Asylum Procedures* (University of Neuchâtel, 2019) 107 – 109, 112.
184 EASO COI Report Methodology 2019 (n 75) 19.
185 Ibid.
186 Ibid 20.

are neither properly assessed for their objectivity nor is contradictory information properly taken into account.[187] For example, the Oslo District Court is of the opinion that COI reports produced by the Norwegian COI unit Landinfo should carry more weight than information produced by UNHCR as Landinfo plays a 'more neutral role.'[188] In the Netherlands, the COI reports produced by the Ministry for Foreign Affairs ('ambtsberichten') are considered expert reports by the Council of State and as a result are also given substantial weight or evidentiary value: In practice, the COI reports are accepted unless there are 'concrete indications,' put forward by the applicant, that a COI report is not correct or incomplete.[189] Joshua Hatton even argues that members of the academic field of migration and refugee studies (MARS) through their work with the UK Advisory Panel on Country Information (APCI) have contributed to the authority of the UK Home Office country reports and the weight they were given in a way that harmed individual asylum applicants.[190]

There is no general hierarchy of sources, the authority of a source will depend on the question that needs answering.[191] The weight that is attached to the COI reports by national COI units is often based on their independent role in the asylum procedure and not necessarily on the quality of the information that they produce. For a long time, the focus has been on improving the quality of COI reports through the implementation of common quality standards rather than focusing on how decision makers, judges and policy makers should handle such information. However, for the assessment of a need for international protection it ultimately matters most whether a decision maker, judge or policy maker is able to recognise any shortcomings in a COI product and attach the appropriate weight to the information in the assessment of a future risk compared to other available information. Therefore, a decision maker, judge or policy maker should assess the Country of Origin Information in COI products as well as other, new or contradictory, information to independently establish the reliability of the information within the context of the issues before him or her. The level of adherence to COI quality standards will determine the authority of the information and the weight that can be attached to the information in the legal assessment of the future risk.

5.3 The normative framework

For the purpose of this research, the Country of Origin Information training manual of ACCORD is considered the most appropriate COI quality standard against which the approach to Country of Origin Information by the ECtHR, the UK Upper Tribunal, UNHCR and the (former) EU Member States should be measured. The ACCORD training manual provides a COI quality standard separate and more detailed from the standards set by the examined institutions.

187 Rosset 2019 (n 183) 112.
188 Ibid 113.
189 Council of State (Netherlands), 200103977/1 (12 oktober 2001) par. 2.3.4; See also, for Sweden, Johannesson (n 168) 77.
190 Joshua Hatton, 'MARS Attacks! A Cautionary Tale from the UK on the Relation between Migration and Refugee Studies (MARS) and Migration Control' (2018) 4 *Movements* 111 – 115.
191 ACCORD training manual (n 2) 88; EU Common Guidelines for Processing COI (n 61) 9; EASO COI Report Methodology 2019 (n 72) 14.

The ACCORD training manual is not a legally binding document. However, the manual represents a European consensus on the guiding principles and quality standards concerning the research and use of Country of Origin Information. As such, the ACCORD training manual is comparable to the Istanbul Protocol or the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.[192] The Istanbul Protocol is also not a legally binding document but is widely used for the documentation of torture.

The Istanbul Protocol contains the first set of internationally recognised standards for the effective examination, investigation and reporting of allegations of torture and ill-treatment. It was drafted by more than 75 experts in law, health and human rights during three years of collective effort involving more than 40 different organisations.[193] The ACCORD training manual was not drafted by such an extensive number of experts and organisations. However, it is also the result of a collaboration with experts and expert organisations. The quality standards in the ACCORD training manual have been developed in consultation with national COI units, academics, national and European NGOs, independent COI experts/information specialists, judges and UNHCR. The standards strongly focus on developments in Europe. However, they also draw on experiences from Australia, Canada, Japan and New Zealand.[194]

The principles in the Istanbul Protocol were adopted by the United Nations Commission on Human Rights in April 2000[195] and adopted in a resolution by the United Nations General Assembly.[196] Moreover, some of the provisions of the Istanbul Protocol have also been endorsed by the ECtHR.[197] The ACCORD training manual has neither been adopted in any UN General Assembly resolution nor has it been endorsed by the ECtHR. However, it does enjoy authority in the field of Country of Origin Information through its support from UNHCR. UNHCR helped develop the standards and recommends the use of the standards to everyone involved in asylum decision-making.[198] The EASO COI Report Methodology builds on the ACCORD training manual. Moreover, EASO's 2018 judicial practical guide on COI contains many references to the ACCORD training manual.[199] This also lends the ACCORD training manual authority. Moreover, ACCORD provided input for the 2006 judicial checklist for assessing Country of Origin Information of the International Association of Refugee and Migration Judges.[200] Some national COI units state that they select the information for their COI reports in accordance with the principles set out in the ACCORD training manual. [201]

192 UN Office of the High Commissioner for Human Rights (OHCHR), *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (Istanbul Protocol) HR/P/PT/8/Rev.1 (2004).

193 International Rehabilitation Council for Torture Victims (IRCT), 'Action against Torture, A practical guide to the Istanbul Protocol – for lawyers' (2009).

194 Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), 'Researching Country of Origin Information: Training Manual' (2004) 1; ACCORD Training manual (n 2) 6, 9 – 10.

195 Resolution 200/43 of 25 January 2001, e/cn.4/2001/66.

196 United Nations General Assembly UNGA), Resolution 55/89 of 4 December 2004.

197 *Bati and Others v. Turkey*, App Nos. 33097/96 and 57834/00 (ECtHR, 3 June 2004) para. 100.

198 ACCORD training manual (n 2) 5.

199 References to the ACCORD training manual can be found throughout the EASO judicial practical guide.

200 International Association of Refugee Law Judges (IARLJ), 'Judicial Criteria for Assessing Country of Origin Information (COI): A Checklist, Paper for 7th Biennial IARLJ World Conference, Mexico City, 6-9 November 2006, COI-CG Working Party' (IARLJ Judicial COI guidelines) (2009) 21 *International Journal for Refugee Law* 149 – 168.

201 E.g., UK Home Office, 'Country Policy and Guidance Note, Turkey: Kurds, version 3.0' (February 2020) 2.

Finally, the 2013 ACCORD training manual is considered a more appropriate standard for the purpose of this research than the 2019 EASO COI Report Methodology. The ACCORD training manual formed the basis for the 2008 EU Common Guidelines for Processing COI and later the EASO COI Report Methodology.[202] Interestingly, the EASO COI Report Methodology is less detailed than the ACCORD training manual. Though the guiding principles and general quality standards are identical, there are small, but significant, differences in interpretation of the COI quality standards regarding the relevancy, accuracy and transparency of information. The standards set by the ECtHR and the UK Upper Tribunal are also less detailed than those laid down in the ACCORD training manual. The ACCORD training manual thus contains the most specific standards for COI research as well as for the presentation of Country of Origin Information in COI products. In the words of UNHCR, the manual 'provides a comprehensive discussion of all aspects of researching and using country information in the context of applications for international protection.'[203] A more detailed or concrete standard for the assessment and presentation of Country of Origin Information ensures a better evaluation of the evidentiary value of information because decision makers, judges and policy makers are more clear on what is expected from them in this regard. A more precise and transparent assessment of Country of Origin Information will lead to the improvement of, and more consistency in, risk assessments.

5.3.1 The applicable standards

The ACCORD training manual COI quality standards include relevance, reliability and balance, accuracy and currency, transparency and traceability:

- **Relevancy**: Country of Origin Information is considered relevant when it is based on questions rooted in legal concepts of refugee and human rights law or on questions derived from an applicant's statements.[204]
- **Reliability and balance**: A source's reliability is assessed by taking into account the source's political and ideological context as well as its mandate, reporting methodology and motivation. Different types of sources, each having its own perspective and focus, should be consulted to establish a balanced picture of the situation in a country of origin.[205]
- **Accuracy and currency**: Only information that is correct and valid at the time of the decision on the need for international protection should be used.[206]
- **Transparency and traceability**: The referencing of Country of Origin Information ensures that information can be traced back to its source, can be independently verify and assessed.[207]

202 EASO COI Report Methodology 2019 (n 72) 6.
203 ACCORD training manual (n 2) 5.
204 Ibid 31.
205 Ibid 32.
206 Ibid 34.
207 Ibid 35.

The standards are presented by ACCORD in the order in which they appear in the research cycle,[208] the research cycle includes the phase in which the questions related to a specific case are formulated, the phase in which sources are consulted, the research phase, and the phase in which the research results are documented and presented.[209] This PhD approaches the COI quality standards in a slightly different order because of the difference between neutral COI research and the evaluation of Country of Origin Information against the evidence provided by an individual applicant and/or in the context of the criteria for international protection.[210] The ACCORD training manual also recognises that decision makers should clearly distinguish between COI research and legal assessment through deliberate assessment of the sources 'to judge their reliability, weigh their value and to thus develop an unprejudiced picture of the situation in a country.'[211] Therefore, the research will specifically focus on relevancy, currency, accuracy, the assessment of reliability, the balancing of information and transparency and traceability.

5.3.1.1 Substantive norms

The quality standards relevancy, currency, accuracy, reliability and balance are considered substantive norms. These standards aim to ensure, as much as possible, an accurate picture of the situation in a country of origin. Decision makers, judges and policy makers should ensure that the Country of Origin Information, that is collected in the fact-finding process and to be evaluated in the context of the criteria for international protection, includes (a) relevant information and (b) current or up-to-date information. Moreover, accurate information should be collected through the selection of (c) several different types of sources and (d) as much as possible primary sources. The sources should be assessed for (e) reliability and, finally, (f) balanced or cross-checked to guarantee the establishment of an accurate and current picture of the situation in a country of origin.

(a) Relevancy

Information only becomes Country of Origin Information whenever it is used in support of a determination of a need for international protection. Therefore, the information needs to be relevant to the individual circumstances of the applicant for international protection. Country of Origin Information is relevant when it is specific and 'based on questions rooted in legal concepts of refugee and human rights law or on questions derived from an applicant's statements.'[212]

208 Ibid 31.
209 Ibid.
210 E.g., Gregor Noll, 'Evidentiary Assessment in Refugee Status Determination and the EU Qualification Directive,' (2006) 12 *European Public Law* 295 – 319; The author states that a close reading of Article 4 (recast) EU Qualification Directive suggests three distinct stages in the processing of information and evidence, namely a first stage compromising the submission of information, the second stage in which the relevance of information is determined and assessed, while the third stage is about evidentiary assessment in the narrow sense, considering the value of evidence and basing the decision on this consideration.
211 ACCORD training manual (n 2) 84.
212 Ibid 31 – 32.

(b) Currency: The use of up-to-date information

Country of Origin Information should be up to date: It should reflect the situation in a country of origin at the time of the publication of a guidance for decision-making or the date of a decision. In some cases, a report that is several years old may still be up to date. In other cases, a news story from the previous day may already be out of date if the situation in a country is fragile and unpredictable. Older reports on certain cultural, historical, or religious issues will remain accurate for longer periods, since these facts do not change as quickly.[213]

(c) Accuracy: The use of different types of sources

Information should be collected from different types of sources, that provide different perspectives on the issues at hand, to create a comprehensive picture of the situation in a country of origin and to rule out as much as possible any biases in individual sources.[214] The reasoning behind the use of multiple sources is that the chances that information is accurate increase the more sources you can find that provide the same information independent from each other.[215] Therefore, information should be collected from international or intergovernmental organisations, government organisations, NGO's or other civil society organisations, the media, and the academia. ACCORD stresses that no general hierarchy of sources exists; 'The usefulness and authority of each source depends on the question it is meant to answer – each source should be assessed in its own right and conclusions on the reliability of the source should only be drawn after a thorough source assessment has been conducted.'[216] ACCORD suggests that all information that has a bearing on a decision or guidance should be corroborated by 'using *three* different sources and different types of sources that independently provide information on the research issue at hand.'[217]

(d) Accuracy: The use of primary sources

According to ACCORD, one should always try to identify a primary source and trace information as far back as possible as secondary sources generally have a higher chance of being misleading. However, a primary source is not necessarily of higher quality, like a secondary source, it may provide false or misleading information.[218] The ACCORD training manual defines a primary source as 'a person or institution providing first-hand testimony or observations on the event or issue in question.' A secondary source is defined as 'a person or institution referring to primary or other secondary sources. It may reproduce, compile, or provide comments on primary or other secondary sources.'[219]

The use of a secondary source may lead to cross-checking mistakes, such as round tripping and false corroboration. Round-tripping of information occurs when a source refers to a secondary source rather than to a primary source or a source that first documented the

213 Ibid 34.
214 Ibid 32.
215 Ibid 134.
216 Ibid 34, 86.
217 Ibid 134.
218 Ibid.
219 Ibid 85

information. Information may get distorted or lost due to selective or incorrect quotations, inaccurate translations, misleading impressions of how up-to-date the information is, etc.[220] False corroboration happens when secondary sources all refer to the same primary source; The information may appear to be corroborated but in practice there is no supporting information.[221]

(e) Reliability: Source assessment

It is essential that a source of information has no vested interest in the outcome of an individual claim for international protection to qualify as COI.[222] That a source of information does not have a vested interested, does not necessarily mean that the source is objective and impartial. A source provides a certain perspective on things, it has a purpose in mind for reporting certain information. Therefore, it is crucial to assess a source for reliability.

In accordance with the ACCORD training manual, the reliability of a source should be assessed to evaluate the quality of the information it is providing in order to determine the weight or evidentiary value that can be attached to the information. The assessment includes an assessment of the reliability of the source as well as the reliability of the information it is providing in a given context. The different aspects of a source, such as its role and authority, its reporting mechanism, and the nature of its products, should be thoroughly examined. The following questions shed light on the relevant aspects of a source and should always be considered while assessing a source; [223]

> **WHO** provides the information? This question will expose whether the source has the relevant knowledge or expertise on the issue at hand, it will also reveal any potential interest or bias. For this reason, it is also important to consider how an author or publisher of Country of Origin Information is funded.[224]
>
> **WHAT** information is provided? The answer to this question will reveal the scope of the reporting of the source which will allow the drawing of conclusions on the expertise and capacity of the source to provide reliable information on a topic. It is also important to establish whether a source is providing observable facts, opinions, conclusions or impressions.[225]
>
> **WHY** is the source providing this information? This particular question aims to shed light on a source's purpose for reporting on specific issues, motivations may be diverse and may be found in a source's mandate, mission or target audience.[226]
>
> **HOW** is the information generated? The research methodology is an important indicator of the reliability of the information provided by a source. According to

220 Ibid 87, 136.
221 Ibid 137.
222 Ibid 36.
223 Ibid 89, 93: The questions can be traced back to the ACCORD 2004 training manual (n 194), the UNHCR 2004 COI Policy Paper (n 19) and the EU Common Guidelines on Processing Country of Origin Information (n 61).
224 Ibid 90.
225 Ibid 90 – 91.
226 Ibid 91.

> ACCORD: 'Indications of careful research include the provision of detailed information to back up all arguments and conclusions, transparent referencing and a well-edited text.' Language and style are important elements to consider, while keeping in mind cultural differences in reporting styles.[227]
>
> **WHEN** was the information gathered and when was it provided? Some time may pass between the occurrence of an event and the actual reporting of the event and there may be several reasons for this that should be taken into account while considering the reliability of a source.[228]

(f) Balance: Cross-checking of information

In the cross-checking process, the different tasks of the COI researcher and the decision maker, judge or policy maker become very clear. Whereas COI researchers will highlight similarities, differences and contradictions in their COI products, a decision maker, judge or policy maker will have to attach weight to those similarities, differences and contradictions. Whereas the COI researcher aims to provide an unbiased picture of the prevailing conditions in a country of origin on the basis of different kind of sources in their COI product, a decision maker, judge or policy maker will have to assess what that unbiased picture means for the need for international protection. Whereas the COI researcher will not draw any conclusions regarding what information should or should not be taken into consideration and to what extent, a decision maker, judge or policy maker will have to draw conclusions as to the facts and what should be taken into consideration in establishing a well-founded fear or a real risk at serious harm. This is the point where it all comes together: Country of Origin Information that is considered reliable, as in independent, impartial and corroborated by a variety of different types of (primary) and up-to-date sources, should be accorded proper weight and be balanced against all other available information that has likewise been assessed.

The ACCORD Training manual states that 'in the context of COI research, the term 'cross-checking' is used to describe the technique of comparing and contrasting information from different sources and different types of sources, highlighting similarities, differences, and contradictions and making them visible in research products.'[229] The ACCORD training manual states that cross-checking is crucial to achieving accuracy and currency,

> When information is corroborated by different sources, you can be more confident about the accuracy of the information. When cross-checking information from one source leads not to corroboration, but to contradiction with information from other sources, it becomes particularly important to assess the reliability of sources and to weigh them on the basis of this source assessment.[230]

227 Ibid 92.
228 Ibid 92.
229 Ibid 134.
230 Ibid 134

The cross-checking of information also involves a focus on details that stand out and on discrepancies between reports from different sources. General and specific information should be combined to assess whether this results in a consistent or contradictory picture of the situation.[231]

5.3.1.2 Procedural norm

The transparency and traceability of the assessment of Country of Origin Information is a procedural norm. The standard aims to ensure that decision makers, judges and policy makers, carefully determine the evidentiary value of all the collected information and can account for their fact-finding, in other words, how they have established the picture of the situation in a country of origin.

(g) Transparency

According to the ACCORD training manual, it is equally important to cross-check information as it is to report on the actual cross-checking process.[232] The ACCORD COI quality standard requires information to be presented in 'a clear, concise, unequivocal and retrievable manner.'[233] Every piece of information should be completely and correctly referenced, whether that is in a COI product, or a decision, to enable users to independently verify and assess information relied on. Information that can be tracked and traced give authority to guidance for decision-making and decisions.[234] To that end, guidance for decision-making and decisions should:

- Include different kinds of sources that provide information on a given research issue.
- State clearly which source provided what kind of information.
- Explicitly point out where sources corroborate or contradict each other.
- Explicitly point out where corroboration was not possible.
- Explicitly point out where no information was found and let the reader know about the efforts that were made.
- In case no information or only information from dubious sources was found, make visible which sources were consulted unsuccessfully.[235]

The reporting on the cross-checking process should be neutral, done in a logical manner as to make sense the users of guidance or the applicant, include a short introduction to the most important sources, provide context to information, distinguish between facts and opinions, reflect all points of view including contradictions, and use appropriate quotes, re-phrasing and summaries.[236]

231 Ibid 135.
232 Ibid 165.
233 Ibid 35.
234 Ibid 35, 170, 193.
235 Ibid 165.
236 Ibid 162 – 164, 169 – 170, 193.

6. Methodology, scope and limitations of the research

This PhD consists of four articles studying the use of Country of Origin Information in leading decisions by the European Court of Human Rights (ECtHR), in Country Guidance Determinations by the Immigration and Asylum Chamber of the UK Upper Tribunal (UTIAC), in UNHCR Eligibility Guidelines, and in Safe Country of Origin (SCO) policies in two (former) EU Member States. Each article discusses the methodology as well as the scope and limitations of that specific part of the PhD in more detail. The following section discusses some of the choices that have been made regarding the focus of the research in general and the methodology applied to the comparison of the findings in the individual articles.

6.1 Guidance for decision-making

Guidance for decision-making is used to improve consistency in decision-making. It provides an evaluation of the background information on a country of origin in which context the statements of an individual applicant should be viewed.[237] It puts forward profiles of people that may be eligible for refugee status or subsidiary protection and provide specific circumstances that may be relevant for the decision maker to take into consideration while determining an individual's future risk in his or her country of origin. Guidance for decision-making can take the form of (leading) jurisprudence as well as policy guidelines. Depending on the form, it may be more or less binding on individual decision makers whose autonomy to interpret Country of Origin Information becomes constrained by the interpretation of the information in guidance for decision-making shaped at other levels of the asylum procedure.[238]

'Like cases should be treated alike,' a statement traced to Aristotle, is seen as a key part of the idea of justice. Hugo Story notes that what is meant by that in practice 'is consistency in service of fair and just decision-making.'[239] However, consistency in asylum decision-making continues to be a major problem, for example, recognition rates in the European Union still vary, sometimes widely, between Member States.[240] Therefore, decision-making in asylum does not appear to be particularly just or fair. Moreover, diverging recognition rates implicates that some of the decisions may be wrong, meaning that applicants in need of protection may have been sent back to their country of origin and/or applicants who may not have a well-founded fear have been given a protection status.[241]

There are two types of questions associated with the evidentiary aspects in asylum decision-making. According to Henrik Zahle, a decision maker should explore, first, the question of

237 UNHCR Handbook (n 1) para 42.
238 Rosset (n 183).
239 Hugo Storey, 'Consistency in Refugee Decision-Making: A Judicial Perspective' (2013) 32 (4) *Refugee Survey Quarterly* 112 – 125, at 114.
240 Communication from the Commission COM/2016/0197 final (n 16) 5; See also, Jaya Ramji-Nogales, Andrew I. Schoenholtz & Philip G. Schrag, 'Refugee Roulette: Disparities in Asylum Adjudication' (2007) 60 *Stanford Law* Review 295 – 412 or Jaya Ramji-Nogales, Andrew I. Schoenholtz & Philip G. Schrag, *Refugee Roulette: Disparities in Asylum Adjudication and Proposals for Reform* (NYU Press 2009).
241 Robert Thomas, 'Consistency in Asylum Adjudication: Country Guidance and the Asylum Process in the United Kingdom' (2008) 20 *International Journal of Refugee Law* 489 – 532, at 490.

'risk-group existence'; With which probability or certainty may we assume that various groups in State X risk being persecuted? This first question concerns the human rights and security situation in a country of origin. Second, a decision-maker should explore the question of 'risk-group affiliation'; With which probability or certainty does the asylum applicant belong to a risk-group? [242] This second question concerns the individual circumstances of the asylum applicant and should be answered within the context of the findings on the general situation in a country of origin. An important tool to overcoming inconsistency in decision-making with regard to the question on 'risk-group existence' is the use of guidance for decision-making.

The core issue in the evaluation of background information in guidance for decision-making is Country of Origin Information. It is used independent from any evidence provided by individual asylum applicants to establish or rebut a well-founded fear of being persecuted for a particular group of people. The standards for collecting and verifying Country of Origin Information are the key to making risk assessments that are rational and defensible.[243]

Given that Country of Origin Information is the foundation of guidance for decision-making, the manner in which information is interpreted in leading jurisprudence and policy guidelines sheds a clear light on how Country of Origin Information is assessed and why certain weight is attached to information in the assessment of the risk for a group of people with distinct characteristics. Considering the importance of guidance for decision-making as a tool harmonising decision-making and the potential to provide legally binding interpretations of Country of Origin Information for individual decision makers, the examination of guidance for decision-making will provide relevant and meaningful findings on how the standards for collecting and verification of information have been given meaning in practice.

Finally, this PhD exclusively focuses on the use of Country of Origin Information for the establishment of a well-founded fear of persecution or a real risk at serious harm. Unfortunately, the use of Country of Origin Information in the assessment of the credibility of asylum applicants, the interaction between evidence put forward by the asylum applicant and the available relevant Country of Origin Information, could not be examined. Exploratory research at the initial stages of this PhD proved that access to individual decisions was too limited to meaningfully examine the use of Country of Origin Information at the level of the individual decision-making process. National authorities only allow limited access to individual decisions. Often, decisions can only be viewed on location. Access to individual decisions is further limited by a language barrier, as decisions are always written in the language of the country involved. These reasons make it practically difficult to analyse and compare individual decisions from different national authorities. Furthermore, UNHCR was asked for permission to access decisions on individual applications for refugee status by UNHCR refugee status determination officers. However, UNHCR refused access citing practical difficulties and privacy concerns.

242 Zahle (n 106).
243 Goodwin-Gill 1992 (n 107) 249.

6.2 The institutions

The research specifically focuses on guidance for decision-making provided in the form of jurisprudence by the ECtHR and the Immigration and Asylum Chamber of the UK Upper Tribunal and guidance for decision-making in the form of policy guidelines published by UNHCR and selected (former) EU Member States.

6.2.1 European Court of Human Rights

For the purpose of this PhD it is relevant to examine the manner in which the ECtHR has given meaning to the standards for the verification of information because of the subsidiary nature of the protection regime established by the European Convention on Human Rights (ECHR). Before the ECtHR can decide on a complaint, the complaint should 'first have been made – at least in substance – to the appropriate domestic body, and in compliance with the formal requirements and time-limits laid down in domestic law.' [244] When the ECtHR does decide on a claim, it should not have to apply a level of scrutiny to a claim that exceeds the scrutiny at the national level. Otherwise, the ECtHR would function as a court of first instance. To prevent the ECtHR from becoming a court of first instance, 'the national system as a whole should be constructed in such a way that it can provide at least the same level of judicial supervision as that provided by the Court.'[245] Therefore, governments should at the very least apply the same level of scrutiny to Country of Origin Information as the ECtHR to provide an effective remedy in respect of an alleged breach of Article 3 ECHR in the domestic system in accordance with Article 13 ECHR.

The ECtHR created under the auspices of the Council of Europe,[246] supervises the implementation of the fundamental rights enshrined in the ECHR. According to Article 46 ECHR, the judgements of the ECtHR are binding: 'The High Contracting Parties undertake to abide by the final judgement of the Court in any case to which they are parties.' In 2005, Gregor Noll questioned whether the standards for evidentiary assessment applied by the ECtHR could be extrapolated into general rules or could be norm-creating given the fact that the binding force of judgements is limited to the case that was decided.[247] The *erga omnes* effect of the ECtHR jurisprudence is still debated at the national level. However, the Court has asserted interpretive authority through its use of precedent, making its judgements an integral part of the ECHR. [248] The ECtHR has held that the core of its jurisprudence is binding on all state parties:

> The Court's judgements serve not only to decide those cases brought before it but, more generally, to elucidate, safeguard and develop the rules instituted by the Convention,

244 *Selmouni v. France*, App No 25803/94 (ECHR 1999) § 74.

245 Thomas Spijkerboer, 'Subsidiarity and 'Arguability': the European Court of Human Rights' Case Law on Judicial Review in Asylum Cases' (2009) 21 *International Journal of Refugee Law* 48 – 74, at 51.

246 Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950 (European Convention on Human Rights) Article 19.

247 Noll 2005 (n 125) 5.

248 Alec Stone Sweet and Clare Ryan, *A Cosmopolitan Legal Order: Kant, Constitutional Justice, and the European Convention on Human Rights* (Oxford Scholarship, 2018) 134.

> thereby contributing to the observance by the States of the engagements undertaken by them as Contracting parties. Although the primary purpose of the Convention system is to provide individual relief, its mission is also to determine issues on public-policy grounds in the common interest, thereby raising the general standards of protection of human rights and extending human rights jurisprudence throughout the community of the Convention States. [249]

The ECtHR has stated that it has final authority with regard to the interpretation of the rights and freedoms in the ECHR. It will consider whether the national authorities have sufficiently taken into account the principles flowing from its judgements on similar issues, even when they concern other States.[250] National authorities should take into account the ECtHR's approach to evidence assessment or its principles regarding the assessment of Country of Origin Information to be in compliance with the ECHR.

The ECHR does not include the right to asylum, however, the ECtHR has repeatedly stated that when states intend to expel an alien, it should take into consideration Article 3 ECHR, which provides for the prohibition against torture or inhuman or degrading treatment or punishment, irrespective of the victim's conduct, however undesirable or dangerous.[251] Therefore, the deportation of asylum applicants may give rise to an issue under Article 3 ECHR, where there are substantial grounds for believing that the individual in question, if expelled, would face a real risk of being subjected to treatment contrary to Article 3 ECHR. Through its Article 3 ECHR case law the ECtHR has had a profound impact on the legal criteria for international protection[252] as well as on the interpretation of Country of Origin Information through its leading judgements.[253]

Like national asylum decision makers, the ECtHR deals with two evidentiary aspects in its Article 3 ECHR case law. The assessment of the individual circumstances of an applicant as well as the human rights and security situation in the country of origin of the applicant. The ECtHR appears to have recognised the potential for achieving more consistency in the implementation of the absolute prohibition of torture through a common interpretation of the situation of countries of origin. This has resulted in 'lead cases' or 'leading judgements' which deal with 'generic issues of risk facing all or some categories of persons from a particular country.'[254] According to Hugo Storey,

249 E.g., *Ireland v. the United Kingdom*, Series A no. 25 (ECHR, 18 January 1978) para 154; *Guzzardi v. Italy,* Series A no. 39 (ECHR, 6 November 1980) para 86, *Karner v. Austria*, App No 40016/98 (ECHR, 2003) para 26; *Rantsev v. Cyprus en Rusland*, App No 25965/04 (ECHR, 7 January 2010) para. 197.

250 *Opuz v. Turkey*, App No 33401/02 (ECHR, 9 June 2009) para 163

251 *Chahal v.UK*, App No 22414/93 (ECHR, 1996-V); *Salah Sheekh v. the Netherlands*, App No 1948/04 (ECHR, 11 January 2007)

252 Nuala Mole and Catherine Meredith, *Asylum and The European Convention on Human Rights* (Council of Europe, 2010)

253 Storey (n 239) 122. Lead cases differ from pilot judgements which procedure was developed as a technique of identifying the structural problems underlying repetitive cases against many countries and imposing an obligation on States to address those problems. In a pilot judgement, the Court's task is not only to decide whether a violation of the European Convention on Human Rights occurred in the specific case but also to identify the systemic problem and to give the Government clear indications of the type of remedial measures needed to resolve it. See European Court of Human Rights, Factsheet – Pilot Judgements (2020).

254 Storey (n 239) 122.

> What "lead cases" or "country guidance" seek to do is, on the basis of a comprehensive examination of the background evidence and relevant expert witnesses conducted often over several days of hearings – which cannot be expected of judges in each and every case they hear –The extent to which this guidance affects a claimant in a particular case will depend entirely on (a) the nature of the guidance; and (b) what findings of fact the judge makes about that claimant's individual's circumstances.[255]

The adoption of the practice of lead cases by the ECtHR has led to some criticism. In particular, Marc Bossuyt is of the opinion that such general decision are 'too far reaching and should be left to governments which are more suitable than judges (and *a fortiori* international judges) to bear its consequences.'[256] Moreover, Bossuyt has expressed doubt whether the Court 'is really exercising the role entrusted to it, when it endeavours in collecting all sorts of reports of national, international or non-governmental organs on the human rights situation in States non-parties to the Convention.'[257] However, this criticism has been refuted with reference to the fact that the evaluation of the Country of Origin Information in lead cases is not binding irrespective of the individual circumstances of the case. Leading judgements aim to support the individual decision-making process, not substitute the individual examination of a claim, by preventing 'a situation where sometimes several hundred judges within the same country or several thousand within the one region can be deciding the very same issue often by reference to variable amounts of relevant Country of Origin Information and coming to diverse conclusions about it.'[258]

Moreover, referring to the subsidiary nature of the ECHR protection system, Nicolas Blake notes that if national courts adopt the appropriate criteria consistent with the jurisprudence of the ECtHR and base their decisions on the analysis of a wide range of Country of Origin Information, the ECtHR will only rarely have to resort to fact-finding like a court of first instance.[259] These criteria do not need to be exactly the same. However, the scrutiny of the Country of Origin Information at the national level should ensure the same level of quality as before the ECtHR.[260]

6.2.2 Immigration and Asylum Chamber of the United Kingdom Upper Tribunal

For the purpose of this PhD, it is relevant to examine how Country of Origin Information is assessed and weighed in Country Guidance Determinations by the Immigration and Asylum Chamber of the UK Upper Tribunal because of the prominent role of Country of Origin Information in the determinations. The Upper Tribunal has specifically invested in country

255 Ibid.

256 Marc Bossuyt, 'The Court of Strasbourg Acting as An Asylum Court' (2012) 8 *European Constitutional Law Review* 203 – 245, at 220.

257 Ibid at 222; See also, Marc Bossuyt, 'Judges on Thin Ice: The European Court of Human Rights and the Treatment of Asylum Seekers' (2010) 3 *Inter-American and European Human Rights Journal,* 3 – 47; Haines (n 147) 173 – 181.

258 Storey (n 239) 123.

259 Sir Nicholas Blake, 'Luxembourg, Strasbourg and the National Court: The Emergence of a Country Guidance System for Refugee and Human Rights Protection' (2013) 25 (2) *International Journal of Refugee Law* 349 – 372, at 368.

260 Spijkerboer (n 245) 52.

guidance and has made resources available to come to detailed and reliable determinations of the conditions in countries of origin and the risks upon returns for certain persons. The system of Country Guidance Determinations is unique and enjoys authority in the UK and beyond.

In the United Kingdom, the Court of Appeal has designed a similar system of leading judgements to promote the administration of justice in immigration and asylum law. The system of Country Guidance Determinations emerged in 2002 to deal with evidence concerning a situation in a particular country of origin that was common to a number of asylum appeals. In the case of *S,* the Court of Appeal considered that the notion of a judicial decision being binding as to fact had evolved in the context of the responsibilities of the Immigration and Asylum Tribunal. The notion of factual precedent regarding the political background in a country of origin seemed 'benign and practical' to the Court of Appeal.[261]

Country Guidance Determinations concern issues that are considered to be of general assistance to judges of the First-Tier Tribunal, national authorities, and to individual applicants because the issues arise regularly.[262] 'Country Guidance Determinations give no guidance on individual personal facts: the guidance is limited to the general circumstances, or the circumstances for a group of people with a particular characteristic, in the country in question.'[263] Just like ECtHR's leading judgements, Country Guidance Determinations aim to provide an analysis of the background situation in a country of origin on the basis of a comprehensive examination of all relevant information in an effort to improve consistency in asylum decision-making. The Court of Appeal has stated that, apart from the desirability of consistency, Country Guidance Determinations

> [E]nables appropriate resources, in terms of the representations of the parties to the Country Guidance appeal, expert and factual evidence and the personnel and time of the Tribunal, to be applied to the determination of conditions in, and therefore the risks of return for persons such as the appellants in the Country Guidance appeal to, the country in question. The procedure is aimed at arriving at a reliable (in the sense of accurate) determination.[264]

The resources available to the UK Upper Tribunal for a detailed country guidance determination on the conditions in a country of origin are not available in each individual case due to the number of applications for international protections.

The findings of fact in Country Guidance Determinations are to be considered authoritative in respect of the particular matter dealt with by the Immigration and Asylum Chambers of the UK Tribunal.[265] Country Guidance Determinations are not considered legally binding 'factual precedents'; the country guidance system allows for the submission of evidence to show that a decision was wrong, is no longer correct, or is not applicable in an individual

261 *S v Secretary of State for the Home Department* [2002] EWCA Civ 539, para 29.
262 Blake (n 259) 354.
263 *AS and AA v Secretary of State for the Home Department* (Effect of previous linked determination) Somalia [2006] UKAIT00052 at para. 63.
264 *SG(Iraq) v. Secretary of State for the Home Department* [2012] EWCA Civ 940, para 44 – 47.
265 Nationality, Immigration and Asylum Act 2002 (NIAA 2002) s 107(3).

case.[266] A Country Guidance Determination is authoritative in any subsequent appeal which (a) relates to the country guidance issue in question and (b) depends upon the same or similar evidence, unless it has been expressly superseded or replaced by any later country guidance determination, or is inconsistent with other authority that is binding on the Tribunal.[267] Failure to apply a Country Guidance Determination by a First-Tier Tribunal judge, or failure to disregard a Country Guidance Determination where appropriate due to new evidence, may result in an error of law.[268] Although, Country Guidance Determinations are only considered authoritative in subsequent appeals, they are also taken into account by UK decision makers and policy makers[269] as well as by NGO's[270] and the ECtHR.[271]

6.2.3 United Nations High Commissioner for Refugees

The inclusion of an examination of the use of Country of Origin Information in UNHCR's Eligibility Guidelines in this PhD is evident because of UNHCR's supervisory function and its contribution to the professionalisation of the field of Country of Origin Information through its information strategy. The Eligibility Guidelines are founded in Country of Origin Information and they are aimed at improving consistency in decision-making. Moreover, UNHCR international protection considerations are considered authoritative.

The Office of the United Nations High Commissioner for Refugees was set up to be the guardian of the 1951 Refugee Convention. Its supervisory function is laid down in article 35 of the 1951 Refugee Convention which reads:

> The Contracting States undertake to co-operate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of this Convention.

Moreover, article 8(a) of the UNHCR Statute states that UNHCR should provide protection to refugees by supervising the application of international conventions for the protection of refugees. The supervision aims to promote a common understanding of the convention's provisions and a consistent application through an institution that can rise above and reconcile competing national interests to ensure that the rules agreed to will indeed be respected.[272]

266 *Januzi v Secretary of State for the Home Department* [2006] UKHL 5, para 50 (Lord Hope of Craighead); Ian Macdonald and Ronan Toal, Macdonald's Immigration Law & Practice, vol 1 (9th edn, LexisNexis Butterworths 2014) 1872; Thomas (n 115) 214 – 216.

267 Practice Directions for the Immigration and Asylum Chamber of the First-Tier Tribunal and the Upper Tribunal (November 2014) (Practice Directions) para 12.2.

268 Blake (n 259) 351.

269 E.g., UK Home Office, 'Country Policy and Information Note – Somalia: Majority Clans and Minority Groups in South and Central Somalia (January 2019) para 2.4.2.

270 E.g., European Council for Refugees and Exiles (ECRE), 'The Implementation of the Dublin II Regulation in 2018 (ECRE, March 2019)

271 *Sufi and Elmi v United Kingdom* App Nos 8319/07 and 11449/07 (ECHR 11 June 2011).

272 Volker Türk, 'The UNHCR's role in supervising international protection standards in the context of its mandate' in James C. Simeon, *The UNHCR and the Supervision of International Refugee Law* (Cambridge University Press, 2013).

UNHCR's external supervisory mechanism is of a rudimentary nature compared to other international human rights treaties enforcement mechanisms.[273] And due to its financial and political dependence on states and the enlargement of its mandate to include the delivering of humanitarian relief, UNHCR has been unable to take up the monitoring tasks inherent in its supervisory responsibility.[274] However, UNHCR has acquired authority in international law through its interpretive guidance on the provisions of the 1951 Refugee Convention aimed at encouraging a more consistent application by national authorities.[275]

One of the ways UNHCR exercises its supervisory function through interpretive guidance is by issuing guidelines that complement the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol. These guidelines, which provide advice on the interpretation of provisions of the 1951 Refugee Convention, concern a number of issues pertaining to the substance of obligations as well as procedural obligations, such as gender-related persecution, membership of a particular social group, cessation of refugee status, internal flight or relocation alternative, application of the exclusion clauses, and religion-based refugee claims.[276] Moreover, UNHCR issues guidelines that are founded in Country of Origin Information and provide an analysis on how particular situations in countries of origin relate to refugee and other international protection criteria; Eligibility Guidelines.[277]

UNHCR has played a key role in the professionalisation of Country of Origin Information research. UNHCR has been the first and most loyal advocate of the importance of the use of accurate and reliable Country of Origin Information in refugee protection, whether at the policy level or at the level of an individual case. In its Handbook on Procedures and Criteria for Determining Refugee Status, unchanged since the first edition in 1979,[278] UNHCR has emphasised that any claim for international protection should be viewed in the context of the relevant background situation and a knowledge of the conditions in a country of origin is an important element in the assessment of an asylum applicant's credibility.[279] UNHCR considers researching and referencing Country of Origin Information an essential undertaking in refugee status determination, it's a way for the decision-maker to satisfy the shared responsibility of the burden of proof.[280] Moreover, UNHCR not only finds Country of Origin Information essential to determine who should be accorded protection, it also finds

273 James Hathaway, *The Rights of Refugees Under International Law*' (Cambridge University Press, 2005) 995; Marjoleine Zieck, 'Article 35 of the 1951 Convention/Article II of the 1967 Protocol', in Andreas Zimmermann (ed.), *The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. A Commentary* (Oxford Scholarship, 2011), 1508; Vincent Chetail, 'Are Refugee Rights Human Rights? An Orthodox Questioning of the Relations between Refugee Law and Human Rights Law' in Ruth Rubio-Marin, *Human Rights and Immigration* (Oxford Scholarship, 2014) 62.

274 Hathaway 2005 (n 273) 995 – 996; Zieck (n 273) 1509; Chetail (n 273) 65; See also, Michael Barutciski, 'The limits to the UNHCR's supervisory role' chapter 3 in James C. Simeon, *The UNHCR and the Supervision of International Refugee Law* (Cambridge University Press, 2013).

275 Hathaway (n 273) 997; Türk (n 272) 53; Chetail (n 273) 64.

276 UN High Commissioner for Refugees (UNHCR), 'Agenda for Protection' (3rd ed, Oct. 2003) 36; For an overview of UNHCR Thematic Guidelines see https://www.refworld.org/publisher,UNHCR,THEMGUIDE,,,0.html

277 Türk (n 272) 52; See also, UN High Commissioner for Refugees (UNHCR), *UNHCR public statement in relation to AMM and others v. Secretary of State for the Home Department pending before the Upper Tribunal (Immigration and Asylum Chamber)*, 6 June 2011.

278 UNHCR Handbook (n 1) 3, 1.

279 UNHCR Handbook (n 1) para 42.

280 United Nations High Commissioner for Refugees (UNHCR), 'Common burdens and standards: legal elements in assessing claims to refugee status' (3 October 2002) 5.

Country of Origin Information essential in the formulation of durable solution strategies, such as voluntary repatriation.[281]

In 1992, the UN High Commissioner for Refugees, Mrs Sadako Ogata, called for a coherent information strategy for the enhancement of international protection of refugees.[282] The basic elements of UNHCR's information strategy, relevant for the purpose of this research, included,

> (a) Enhancing UNHCR access to accurate, up-to-date information about the causes of refugee and refugee-like movements, with a view to improved decision-making at Headquarters and field levels regarding those who should be accorded protection, sounder policy formulation with respect to voluntary repatriation as a durable solution, and in dealing with the preventive dimension of UNHCR's operations;
>
> (b) In co-operation with other international agencies, Governments and relevant NGOs, developing the capacity to collect, analyze, exchange and disseminate public-domain information relevant to UNHCR's protection responsibilities,
>
> (c) Contributing in appropriate fora to the development and standardisation of criteria relating to the collection, accuracy and credibility of information.[283]

Regarding the first element, it was widely recognised within UNHCR that electronic information technology was important for speedy access to high quality, up-to-date, reliable and accurate information as a basis for timely and responsible decision-making.[284] Therefore, UNHCR's information strategy included the development of systems for the collection, analysis and dissemination of information, such as databases on the conditions in countries of origin.[285] The databases included Country of Origin Information as well as international instruments, national legislation relevant to refugees and asylum-seekers, United Nations Security Council and General Assembly resolutions relevant to UNHCR concerns and areas of operation, refugee literature, and case law relating to refugees and human rights.[286] To ensure a wider dissemination and enhancement of accessibility to information by governments, universities, NGOs, and individual subscribers, the Refworld databases were spread through CD-ROM from 1995 onwards.[287] An internet-based Refworld was launched in 2007.[288] Nowadays,

281 United Nations High Commissioner for Refugees (UNHCR), *Informed decision-making in protection: the role of information* UN doc EC/1993/SCP/CRP.6 (27 September 1993) (UNHCR Informed decision-making in protection 1993) para 3.

282 Opening Statement by Mrs. Sadako Ogata, United Nations High Commissioner for Refugees, at the Forty-third Session of the Executive Committee of the High Commissioner's Programme (ExCom), Geneva, 5 October 1992; See also, Statement by Mr. Ruud Lubbers, UN High Commissioner for Refugees, at an informal meeting of the European Union Justice and Home Affairs Council, Copenhagen, 13 September 2002.

283 UNHCR Informed decision-making 1993 (n 281) para 10.

284 UN General Assembly, *Note on International Protection (submitted by the High Commissioner)* UN doc A/AC.96/799 (25 August 1992) (UN General Assembly Note on International Protection 1992).

285 UNHCR Informed decision-making in protection 1993 (n 281) para 5.

286 Ibid.

287 UNHCR, *Information note on UNHCR's activities for refugee law promotion, dissemination and training*, UN doc EC/SCP/91 (11 September 1995) paras 18 – 19.

288 UNHCR, 'Information Note: Launch of UNHCR's Internet-Based Refworld. Annual Tripartite Consultations on Resettlement, Geneva, 28-30 June 2007 (Agenda Item 3k)' (28 June 2007).

Refworld is a widely used online protection and research tool for UNHCR protection officers and other staff, government decision makers, non-governmental organisations, the judiciary, private practitioners and academics. At the start of 2019, UNHCR announced that it endorsed ACCORD's ecoi.net as the main global platform for Country of Origin Information. Instead of Country of Origin Information, Refworld will focus on case law, national laws and policy documents to ensure an added value in comparison to other platforms.[289]

The publication of country papers, in the form of background papers or international protection considerations (later called Eligibility Guidelines), is part of UNHCR's information strategy 'to fill the gaps resulting from the lack of an integrated international mechanism for the collection and exchange of information.'[290] Since 1991, UNHCR has systematically collected and circulated Country of Origin Information to its own staff and other external users. Whereas background papers 'aim to provide an overview of the general political, economic, social and human rights situation prevailing in the respective country of origin,' international protection considerations 'provide an authoritative UNHCR position vis-à-vis various groups at risk and applicable exclusion criteria. They are designed to provide focussed guidance to UNHCR and Government staff carrying out RSD.'[291] UNHCR issues Eligibility Guidelines to promote the accurate interpretation and application of the criteria for international protection. Like the leading judgements by the ECtHR and the Country Guidance Determinations of the UK Upper Tribunal, the Eligibility Guidelines' overall aim is improving consistency in decision-making. UNHCR's international protection considerations in its Eligibility Guidelines, though not legally binding, are considered authoritative and taken into account by national policy makers and decision makers.[292]

Moreover, the second element of UNHCR's information strategy was aimed at the strengthening of UNHCR's co-operation in information exchange with governments, NGOs and refugee and human rights documentation networks.[293] UNHCR has been an important actor in the co-operation on information exchange within the European Union since the late 1980s. UNHCR participated in the very first meeting of the COI working group in 1989 hosted by the Intergovernmental Consultations on Migration, Asylum and Refugees (see section 3.2),[294] and has been an active contributor ever since. In 1995, UNHCR joined CIREA, the more formal exchange of country information under the European Council, in an observer capacity. UNHCR's Centre for Documentation on Refugees provided up-to-date Country of Origin Information on a regular basis in an effort to positively influence the admissibility and eligibility practices of the EU Member States.[295] UNHCR's Centre for Documentation on Refugees work was taken over by the Protection Information Section of UNHCR's Department for International Protection in August 2001. The Protection Information Section continued to attend the meetings, as an external expert, of CIREA's successor EURASIL.

289 <https://www.refworld.org/faq.html> accessed 25 April 2020.
290 UNHCR COI Policy Paper (n 19) Annex I.
291 Ibid.
292 Walter Kälin, 'Supervising the 1951 Convention Relating to the Status of Refugees: Article 35 and beyond' in Erika Feller, Volker Türk, and Frances Nicholson, *Refugee Protection in International Law, UNHCR's Global Consultations on International Protection* (Cambridge University Press, 2003) 625 – 627.
293 UN General Assembly Note on International Protection 1992 (n 284); UNHCR Informed decision-making in protection 1993 (n 281) para 9.
294 Wall (n 24) 153.
295 UNHCR, 'Toolbox II: The Fundamentals' (2003) 87, 177.

Already in 2001, UNHCR called for the establishment of a European documentation centre for the collection, dissemination and evaluation of Country of Origin Information, as well as legal and protection issues and trends. UNHCR aspired a role in the governing structures of such a centre and thought that UNHCR information and guidance should be spread through the centre to the administrative and judicial asylum bodies of the EU Member States.[296] Nowadays, UNHCR closely cooperates with the European Asylum Support Office, [297] participates in the Office's Management Board as a non-voting member and the Consultative Forum.[298]

In 2004 UNHCR produced a more comprehensive policy paper on its approach to Country of Origin Information that explored possibilities for 'enhanced co-operation among States, and between UNHCR and States, through a more systematic exchange of information based on common standards.'[299] Again, UNHCR emphasised that an objective and transparent COI system, that can deliver rapid and reliable COI, is central to any refugee status determination procedure:

> The underlying philosophy is to facilitate access to a wide range of opinions and information in an objective way. By comparing and contrasting information from a variety of different sources, decision makers are assisted in forming an unbiased picture of prevailing conditions in countries of concern. Although national Refugee Status Determination procedures may differ from each other, the type and quality of information needed in any procedure is the same. It follows that one way of improving the consistency in decision making between, as well as within countries of asylum, could be the use of a common knowledge base and common assessments concerning the situation in countries of origin.[300]

The 2004 UNHCR policy paper focused on the promotion of international co-operation, in particular at the regional level in the European Union. UNHCR observed that the existing international co-operation was restricted to sharing of information and stopped short at producing an actual common assessment or evaluation of a country situation. UNHCR considered the degree to which Country of Origin Information and assessments can be harmonised, limited, as each asylum application has to be examined on its individual merits. Nevertheless, UNHCR did see opportunities for improved international co-operation in the field of Country of Origin Information through the strengthening of networks at the level of senior policy makers and practitioners.[301]

Finally, the third element of UNHCR's information strategy was aimed at contributing to the development and standardisation of criteria relating to the collection, accuracy and credibility of information. Over the years, UNHCR has put forward a set of criteria to unify the information collection processes and improve the overall quality of collected information.

296 United Nations High Commissioner for Refugees (UNHCR), 'UNHCR Observations on the European Commission Communication "Towards a Common Asylum Procedure and Uniform Status, Valid Throughout the European Union, for Persons Granted Asylum" (COM (2000) 755 final)' (November 2001) para 21.
297 EASO regulation (n 70) art. 2(5), 50.
298 Ibid art. 25(4), 51.
299 UNHCR COI policy paper (n 19) para 1.
300 Ibid para 5.
301 Ibid paras 6 - 8.

It has done so through its 2004 policy paper as well as through its support for the ACCORD training manual.

6.2.4 (Former) EU Member States' national designations of Safe Countries of Origins

The inclusion of the examination of the use of Country of Origin Information in the national designations of Safe Countries of Origin in the Netherlands and the United Kingdom in the fifth chapter of this PhD may appear less evident. However, like leading judgements, Country Guidance Determinations and Eligibility Guidelines, the core issue in the designation of a Safe Country of Origin is Country of Origin Information. It is a 'consistency enhancing measure *par excellence*.'[302] The way the Netherlands and the United Kingdom use Country of Origin Information in their Safe Countries of Origin policies is of particular interest to this research because of the role these countries have played in the practical co-operation regarding the use of Country of Origin Information in the European Union. The examination of the national designations of Safe Countries of Origin provides insight into the manner in which the standards for the assessment of information in the EASO COI Report Methodology have been given meaning at the national level.

The concept of 'Safe Country of Origin' is a seemingly fixed part of the Common European Asylum System through articles 36 and 37 of the recast EU Asylum Procedures Directive. Article 37 of the recast Asylum Procedures Directive states that a Member State may retain or introduce legislation that allows for the national designation of Safe Countries of Origin. Annex I of the recast EU Asylum Procedure Directive determines that a country of origin may be considered safe where,

> on the basis of the legal situation, the application of the law within a democratic system and the general political circumstances, it can be shown that there is generally and consistently no persecution, no torture or inhuman or degrading treatment or punishment and no threat by reason of indiscriminate violence in situations of international or internal armed conflict.

According to article 37 (3) of the recast EU Asylum Procedures Directive, the assessment of whether a country is safe should be based on a range of sources of information, including in particular information from other Member States, EASO, UNHCR, the Council of Europe and other relevant international organisations. For the verification and use of the information in national designations, consideration 46 of the recast Asylum Procedures Directive states that EU Member States should take into account the EASO COI Report Methodology.

In the United Kingdom, which is not bound by the recast Asylum Procedures Directive as it has opted out of the adoption of the recast of the directive,[303] article 94 (5) of the Nationality, Immigration and Asylum Act 2002 (NIAA 2002) determines that the Secretary of State may, by order, designate a State safe if (s)he is satisfied that there is in general no serious risk of persecution of persons in that State or part of that State, and the removal to that State

302 Storey (n 239) 114.
303 Recital (58) of the preamble of the recast Asylum Procedures Directive.

will not in general contravene the UK's obligations under the Human Rights Convention. The Secretary of State should have regard to all the circumstances in a country of origin, including the laws and how they are applied.[304] In deciding on whether there is in general no persecution, the Secretary of State should 'have regard to information from any appropriate source (including other member States and international organisations).'[305] According to the UK Home Office, this information is assessed according to the principles in the EASO COI Report Methodology.[306]

Though a 'consistency enhancing measure *par excellence*,' the designation of a country as safe is foremost a response to a rise in asylum applications and serves a procedural purpose. Therefore, the procedural consequences of the designation of a country as safe are very distinct from the effects of the interpretation of the situation in a country of origin in leading judgements, Country Guidance Determinations and Eligibility Guidelines. Asylum applications from applicants from designated countries may be considered clearly or manifestly unfounded, applicants may be detained, and the procedure fast-tracked. An appeal against a refusal may often only be made from outside the asylum country. Yet, the designation of a country as safe is also not binding irrespective of the individual circumstances of the case. An individual applicant can rebut the presumption of safety by submitting 'any serious grounds for considering the country not to be a Safe Country of Origin in his or her particular circumstances and in terms of his or her qualification as a beneficiary of international protection.'[307]

Considering the reduction of procedural safeguards associated with the designation of a country of origin as safe, which will often limit an applicants' ability to rebut the presumption of safety,[308] it arguably becomes even more important for that designation to be based on an proper analysis of different types of sources providing relevant, current, accurate and reliable information on the human rights situation in the country of origin.

6.2.4.1 The focus on the Netherlands and the United Kingdom

The decision to focus on the Netherlands and the United Kingdom is based on the fact that both countries were frontrunners in the professionalising of Country of Origin Information. In 1989, asylum decision makers in the Netherlands had access to computerised 'country profiles' through a database called LANDOC.[309] The 'country profiles' were collected and maintained for the purpose of assisting the interviewers of asylum applicants. The regional offices of the Ministry of Justice held their own collections of Country of Origin Information consisting of 'ambtsberichten' – until today the main source of Country of Origin Information [310] - press cuttings from mostly Dutch news media, annual reports from the US State Department, Amnesty International, ad hoc NGO reports, books, articles, reference

304 Article 94 (5D) (a) NIAA 2002.
305 Article 94 (5D) (b) NIAA 2002.
306 See, for example, UK Home Office, 'Country Policy and Information Note Albania: Women fearing domestic abuse' (December 2017) version 2.0.
307 Article 36 (1) of the recast EU Asylum Procedures Directive.
308 Cathryn Costello, 'Safe Country? Says Who? (2016) 28 (4) *International Journal of Refugee Law* 601 – 622, at 603.
309 Evian report (n 20) 12.
310 Council of State (Netherlands), 200103977/1 (12 October 2001) par. 2.3.4.

books, correspondence between ministries and individual case files. The asylum decision makers mostly gathered their own information already with support of a two-person information unit. [311] By 1994, the Netherlands had developed a fully specialised COI unit dedicated to the systematic collection and analysis of Country of Origin Information.[312] Nowadays, the 'Team Onderzoek en Expertise Land en Taal (TOELT)'is part of the Directorate Specialist Services and International Cooperation within the Immigration and Naturalisation Service. The unit with around 24 staff members[313] consists of a Country Subdivision and a Language Analysis subdivision. The Country Subdivision produces about forty country-specific and thematic reports, as well as country analysis reports, that are used by asylum decision makers and other officials of the Immigration and Naturalisation Service. They also respond to specific questions from decision makers.[314] Moreover, there is another dedicated COI unit within the Ministry for Foreign Affairs which produces more general COI reports on the human rights, security and political situation in countries of origin. The 'Team Onderzoek en Expertise Land en Taal,' the COI unit with the Immigration and Naturalisation Service, requests these 'ambtsberichten' and provides the Terms of References. The COI unit within the Ministry for Foreign Affairs may conduct fact-finding missions to collect relevant information.[315]

Up until 1997, when the United Kingdom established its own specialised COI unit the Country Information and Policy Unit, the UK Home Office relied on information obtained from the Foreign and Commonwealth Office (FCO) through routine FCO telexes and by specific enquiry. Moreover, decision makers has access to a wide variety of sources, such as Europa Yearbooks, Watch Committee reports, Amnesty International reports, most major daily and weekly journals that were monitored for relevant items, and finally, the UNHCR database.[316] Each decision maker was assigned a particular country of origin, building up an expert knowledge on this country and liaise with the Foreign and Commonwealth Office.[317] Initially, the Country Information and Policy Unit produced COI reports and ad hoc COI Bulletins. In 2000, the Country of Origin Information Service became responsible for COI reports, whereas the Country Specific Litigation Team (CSLT) produced policy guidelines in the form of Operational Guidance Notes.[318] These two teams merged in 2014, and currently, the production and updating of COI products is the responsibility of the Country Policy and Information Team (CPIT). A team of eight staff members produces around 100 to 120 Country Information and Guidance Notes (updated or new) and responds to about 1,000 more specific requests from decision makers.[319] Unique to the UK system is the monitoring of the work of the Country Policy and Information Team by the Chief Inspector of Borders and Immigration. In accordance with article 48 (2) (j) of the UK Borders Act 2007, the Chief Inspector shall consider and make recommendations about 'the content of information about conditions in countries outside the United Kingdom which the Secretary of State compiles

311 Evian report (n 20) 12.
312 Wall (n 24) 154.
313 Engelmann (n 26) 108.
314 Intergovernmental Consultations on Migration, Asylum and Refugees (ICG), 'Asylum Procedures: Report on Policies and Practices in ICG Participating States - 2015' (ICG 2015) 270 – 271.
315 Ibid 270.
316 Wall (n 24) 154.
317 Ibid.
318 Chief Independent Inspector report 2018 (n 136) 14.
319 Ibid 7.

and makes available, for purposes connected with immigration and asylum, to immigration officers and other officials.' The 'Independent Advisory Group on Country Information (IAGCI),' established in 2009, advises the Chief Inspector on the content and quality of Country Information and Guidance Notes.

The Netherlands and the United Kingdom have actively participated in the practical co-operation on Country of Origin Information. The Netherlands and the United Kingdom were among the first participants of the Intergovernmental Consultations on Migration, Asylum and Refugees.[320] For example, the Netherlands was the driving force behind the establishment of the Centre for Information, Discussion and Exchange on Asylum (CIREA), in 1992,[321] as well as the High-Level Working Group on Asylum and Migration in 1998.[322] Moreover, the Netherlands and the United Kingdom were part of the project group that developed the EU Common Guidelines for Processing COI. The United Kingdom, again, was part of the working party that developed the 2012 EASO COI Report Methodology.[323] The Dutch COI unit within the Immigration and Naturalisation Service actively participates in the activities of EASO regarding Country of Origin Information. For example, it sits in a number of COI-specialist networks and is the facilitator for the specialist network on Somalia.[324] The United Kingdom is currently involved in EASO's activities through operations, the deployment of experts, the preparation of training material and projects. With Brexit becoming a reality the future relationship between EASO or the EU Agency for Asylum and the United Kingdom will need to be evaluated. EASO is not mentioned as an area of key interest by the UK, though, EASO is considered 'a prime opportunity for continued collaboration in the area of international protection. From the EU's perspective, EASO could act as a mechanism to ensure continued alignment and monitor potential divergences between UK and EU asylum procedures.'[325] The 2018 study by the Policy Department for Citizen's Rights and Constitutional Affairs of the European Parliament commissioned by the Committee on Civil Liberties, Justice and Home Affairs specifically mentions that the EU could further benefit from the UK's input via country reports.[326]

6.3 Methodology for comparing findings and establishing good practices

Chapter 6 will bring together the findings of the examination of the leading jurisprudence of the ECtHR, the Country Guidance Determinations by the UK Upper Tribunal, the UNHCR Eligibility Guidelines and the national designations of Safe Countries of Origin by the Netherlands and the United Kingdom. The findings will be set against the ACCORD training manual. Chapter 6 aims to formulate recommendations on how the evidentiary assessment of Country of Origin Information can be improved and better reflected in considerations concerning international protections needs in decisions, jurisprudence and policy guidelines.

320 Wall (n 24) 34.
321 Engelmann (n 26) 123.
322 Council Conclusions 2148th Council Meeting (41).
323 EU Common Guidelines for Processing COI (n 61) 2; EASO COI Report Methodology 2012 (n 72) 5.
324 ICG 2015 (n 314) 271.
325 European Parliament Committee on Civil Liberties, Justice and Home Affairs, 'The future relationship between the UK and the EU following the UK's withdrawal from the EU in the field of international protection' (Policy Department for Citizen's Rights and Constitutional Affairs 2018) 82.
326 Ibid.

The recommendations will be made to the examined institutions. Moreover, a particular set of recommendations will be directed at the EU Member States and the future EU Agency for Asylum which will be tasked with (further) developing a common COI methodology and the issuing of detailed and regular guidance on the situation in specific countries of origin based on a common analysis of Country of Origin Information.

First, chapter 6 aims to establish the extent to which institutions follow each other's approach to Country of Origin Information and/or whether there is a set of COI quality standards that is of particular importance to all the examined institutions. Therefore, section 2 of chapter 6 will examine how the different standards were developed. In particular, it will examine how the standards have been influenced by other COI quality standards. For this purpose, the examination focuses on any references to other COI quality standards in the examined jurisprudence of the ECtHR and the UK Upper Tribunal, by UNHCR and in the EASO COI Report Methodology. It will focus on references in relation to the setting of the COI quality standards and on references to particular practices of the other examined institutions.

Second, chapter 6 aims to establish on what individual standards the examined institutions agreed and/or whether there are any relevant differences in the standards. Therefore, it will compare the standards and practices of the examined institutions. Moreover, it will set the standards against the ACCORD training manual to establish good practices with regard to the evidentiary assessment of Country of Origin Information. Section 3 will compare the standards and practices regarding relevancy, currency, accuracy, reliability and balance. section 4 will compare the standards and practices regarding transparency and traceability. Both sections will highlight any good practices found as a result of the comparison with the ACCORD training manual.

Third, the comparison of the standards and practices will serve as the basis for recommendations on how the evidentiary assessment of Country of Origin Information can be improved and better reflected in considerations concerning international protections needs in decisions, jurisprudence and policy guidelines in accordance with the ACCORD training manual. The first set of recommendations are addressed specifically to the first three institutions examined in this PhD: the ECtHR, the UK Upper Tribunal and UNHCR. The recommendations focus on the standards set by the institutions and provide suggestions for more detailed standards in accordance with the ACCORD training manual, where applicable, to improve the evidentiary assessment of Country of Origin Information in practice by the institutions itself. The second set of recommendations will not only focus on the Netherlands and the United Kingdom. The recommendations will focus on the application of the common standards on Country of Origin Information in the European Union as a whole because any suggestions regarding the COI quality standard in the EASO COI Report Methodology concern the use of Country of Origin Information in all EU Member States. It will also offer some final observations regarding the Country Guidance Notes that are now being published by EASO.

6.3.1 Comparability of the examined institutions

The recommendations at the end of this PhD are based on the comparison of the COI quality standards and practices of the leading jurisprudence of the ECtHR, the Country Guidance Determinations by the UK Upper Tribunal, the UNHCR Eligibility Guidelines, the national designations of Safe Countries of Origin by the Netherlands and the United Kingdom as well as the ACCORD training manual. The following section will highlight commonalities and differences concerning the examined institutions that are relevant to the conclusions that can be drawn and the recommendations that can be made regarding the evidentiary assessment of Country of Origin Information in considerations on international protection needs.

The examination focuses on guidance for decision-making in leading jurisprudence of the ECtHR, Country Guidance Determinations by the UK Upper Tribunal, UNHCR Eligibility Guidelines and national designations of Safe Countries of Origin in two (former) EU Member States. The essential foundation of the leading jurisprudence, the Country Guidance Determinations, the Eligibility Guidelines and the national designations of Safe Countries of Origin is Country of Origin Information. The guidance's have in common that they provide an analysis of the security or human rights situation in a country of origin. They provide guidance on how the situation should be interpreted in the context of refugee and human rights law. In particular, they identify profiles of people that may or may not be eligible for refugee status or subsidiary protection and provide specific circumstances that may be relevant for the decision maker to take into consideration while determining an individual's future risk in his or her country of origin. Moreover, the leading jurisprudence, the Country Guidance Determinations, the Eligibility Guidelines and the national designations of Safe Countries of Origin have in common that they aim to improve consistency in decision-making by limiting individual decision makers' authority to interpret Country of Origin Information independently. To a certain extent, the ECtHR, UK Upper Tribunal and UNHCR even aim to influence the decision-making in the same asylum countries. The ECtHR, UK Upper Tribunal and UNHCR target decision-making in the United Kingdom, whereas the ECtHR and UNHCR both also focus on decision-making in all the Council of Europe's Member States.

The examination of the national designations of Safe Countries of Origin appears to be the odd one out. The leading jurisprudence by the ECtHR, the Country Guidance Determinations by the UK Upper Tribunal and the UNHCR Eligibility Guidelines aim to identify who may be eligible for international protection. The national designations of Safe Countries of Origin aim to establish the opposite: That in general nobody is eligible for international protection. However, the core issue or crucial element in the designation of a country of origin as safe is still Country of Origin Information. In the words of Goodwin-Gill,

> Whether the objective is to include or to exclude, the essentials of risk assessment remain the same. What counts in every case is the weight of the information. Provided it is available, verified and public, a coherent body of Country of Origin Information will necessarily gain authority.[327]

327 Goodwin-gill 1992 (n 107) 249.

Therefore, whether your aim is to establish who may be eligible for protection or who is in general not eligible for protection, the Country of Origin Information at the basis of the risk assessment should be assessed for its value in accordance with the same quality standards. The manner in which the Country of Origin Information is scrutinised, or the level of scrutiny, should be the same. As a result, the use of Country of Origin Information in national designations of Safe Countries of Origin is comparable to the use of Country of Origin Information in leading jurisprudence, Country Guidance Determinations and Eligibility Guidelines.

Moreover, it is important to note that the guidance for decision-making in the ECtHR's leading decisions and the Country Guidance Determinations transcends the national asylum procedure or individual decisions at the basis of these cases. The parts of the ECtHR and the UK Upper Tribunal's decisions that hold the guidance for decision-making are not aimed at solely deciding the cases before the Courts. The guidance is aimed at influencing more generally the consistency of decision-making in, respectively, the Council of Europe's Member States and the UK, at first instance and appeal. Therefore, the examination of the ECtHR and the UK Upper Tribunal is limited to the analysis of the security and human rights situation in Iran, Sri Lanka and Somalia and how the situation should be interpreted in the context of refugee and human rights law. The scrutiny of the overall outcome of the national asylum procedure in the jurisprudence of the ECtHR and the scrutiny of the asylum decision by the UK Upper Tribunal is not included in the research. Chapter 6 section 2 will discuss to what extent the evidentiary assessment of Country of Origin Information in leading jurisprudence and Country Guidance Determinations should be followed by national decision makers. It will also discuss this for the standards set by UNHCR and the EASO COI Report Methodology.

There were some differences in the guidance for decision-making of the ECtHR, UK Upper Tribunal, UNHCR and the (former) EU Member States that impacted the manner of examination of the evidentiary assessment of the Country of Origin Information. For example, the range of issues covered in the guidance by the ECtHR and the UK Upper Tribunal is limited compared to the issues covered in the guidance by the UNHCR and the national designations of Safe Countries of Origin. The issues covered in the guidance for decision-making by the ECtHR and the UK Upper Tribunal are identified on the basis of the specific circumstances in a particular individual case whereas the UNHCR Eligibility Guidelines and the national designations focus on all categories of persons that may be eligible for international protection. The jurisprudence of the ECtHR and the UK Upper Tribunal deals with limited issues, for example, the security situation in a country of origin and/or the position of one particular group of people in a country of origin. UNHCR Eligibility Guidelines and designations of Safe Countries of Origin deal with a wide arrange of issues from the general security situation as well as the position of several different groups of persons at risk (or not at risk). It is easier to verify whether the courts take into consideration *all available* relevant Country of Origin Information, because of the limited issues before the ECtHR and the UK Upper Tribunal. This verification is much more time consuming for the examination of the use of Country of Origin Information by UNHCR and the national authorities as it requires proper COI research on all the issues covered in the policy guidelines. The examination of the use of Country of Origin Information by the ECtHR and the UK Upper Tribunal looked into whether the courts had collected all available information as far as it concerned information available on Refworld. However, in an effort to not shift the focus from the aim to establish the application of COI quality standards in practice to doing actual COI research, the examination of the approach

taken by UNHCR and the national authorities did not look into whether *all available* relevant information was taken into consideration.

6.3.2 Comparability of the examined countries of origin

The following section will highlight commonalities and differences concerning the examined countries of origin that are relevant to the conclusions that can be drawn and the recommendations that can be made regarding the evidentiary assessment of Country of Origin Information in considerations on international protection needs.

The choices for the focus on guidance for decision-making on particular countries of origin are based on a mixture of considerations regarding the amount of available jurisprudence and guidelines on a particular country and the comparability of the findings. The examination of the use of Country of Origin Information in the jurisprudence of the ECtHR and the UK Upper Tribunal focuses on the jurisprudence on Iran, Sri Lanka and Somalia. For the UNHCR Eligibility Guidelines the examination focuses on Afghanistan, Sri Lanka and Somalia. Finally, the examination of the national designations of Safe Countries of Origin focuses on Albania and Kosovo. With the inclusion of these countries, the examination incorporates the use of Country of Origin Information in different kinds of risk assessment. Namely, the assessment of a general security situation (Afghanistan, Somalia), the assessment of a group systematically exposed to persecution or ill-treatment (Afghanistan, Sri Lanka, Somalia), and the assessment of special distinguishing features in specific individual circumstances (Afghanistan, Albania, Kosovo, Iran and Sri Lanka).

The examination of the UNHCR Eligibility Guidelines focused on Afghanistan rather than Iran due to the absence of any UNHCR Eligibility Guidelines on Iran. Moreover, Albania and Kosovo have only been examined in the context of the national designations of Safe Countries of Origin because there is no relevant article 3 ECHR jurisprudence on these countries. Likewise, there are no UNHCR Eligibility Guidelines available on Albania and only two older, short, guidelines on Kosovo. There is also no relevant Article 3 ECHR jurisprudence or UNHCR guidelines available on other Safe Countries of Origin for that matter. However, there are Country Guidance Determinations available for Albania and Kosovo and it could have also been relevant to examine these decisions by the UK Upper Tribunal for comparability with the national designations of these countries as safe by the national authorities. The decision was made to focus on identical caseloads for the examination of the use of Country of Origin Information by the two judiciaries because of the particular functions of the ECtHR and the UK Upper Tribunal and the fact that both institutions refer to one another in their jurisprudence. The Country Guidance Determinations on Albania and Kosovo form part of the UK's policy on the safe designations of these countries of origin. Therefore, the Country Guidance Determinations were still examined within the context of the examination in chapter five, as far as they were valid at the time of the policy.

The main difference between the examination of the use of Country of Origin Information with regard to Afghanistan, Iran, Sri Lanka and Somalia and Albania and Kosovo is the amount and kind of information available. There is much more information available on Afghanistan, Iran, Sri Lanka and Somalia and the information available is often published for the purpose of being used in asylum procedures. In contrast, the information available on Albania and Kosovo is more limited and often concerns information that was written for different purposes. For example, the reports by the European Commission on whether

Albania meets the membership criteria to join the European Union are being used to assess whether there is in general no persecution in Albania. This does not necessarily impact comparability of the findings of the examination of the different practices. It underscores the need for national authorities to properly assess the available information for relevancy, currency, accuracy and reliability to establish the evidentiary value and the conclusions that can reasonably be drawn from the information.

Finally, the examination of the use of Country of Origin Information by the ECtHR, the UK Upper Tribunal and UNHCR provides the opportunity to study how different institutions can draw different conclusions on the same situation from the same Country of Origin Information. Albeit, this can only be studied in relation to the issues dealt with by the ECtHR and the UK Upper Tribunal. Obviously, this comparability is completely lacking with regard to the examination of the use of Country of Origin Information in the national designations of Albania and Kosovo as Safe Countries of Origin. However, the main purpose of the research is not to compare the assessment of the *same* situations on the basis of the *same* Country of Origin Information but rather to compare, in general, the assessment of Country of Origin Information and the manner in which Country of Origin Information is weighed and balanced. The research aims to offer a better understanding of how COI quality standards are being given meaning in practice by different institutions at different levels. Therefore, the examination of the use of Country of Origin Information in designations of Safe Countries of Origin is just as relevant.

7. Reader's guide

This final introductory section provides an overview of the different topics that are examined in this PhD.

Chapter 2; **Principles corroborated by practice? The use of Country of Origin Information by the European Court of Human Rights in the Assessment of a real risk of a violation of the prohibition of torture, inhuman and degrading treatment**[328]

This chapter studies the European Court of Human Rights (ECtHR) approach to Country of Origin Information in its case law under Article 3 of the European Convention of Human Rights (ECHR), in particular in expulsion cases of applicants from Somalia, Tamils applicants from Sri Lanka and applicants from Iran. First, it discusses the legal context in which the ECtHR operates when it rules on possible violations of Article 3 ECHR in section 2. The methodology applied in this particular chapter is discussed in section 3. Sections 4 to 6 examine the standard set by the ECtHR on the use of Country of Origin Information,

328 Femke Vogelaar, 'Principles corroborated by Practice? The Use of Country of Origin Information by the European Court of Human Rights in the Assessment of a Real Risk at a Violation of the Prohibition of Torture, Inhuman and Degrading Treatment,' (2016) 18 *European Journal for Migration and Law* 302 – 324.

followed by an assessment of the application of these principles by the ECtHR in its case law. Sections 4 examines the standards regarding the collection of information and the manner in which the ECtHR collects information in practice. The section focuses on the relevancy of the sources relied on by the ECtHR, the inconsistent and inadequate use of sources as well as the impact of the Court's requirement to do an *ex nunc* assessment on the sources it uses. Sections 5 examines the Court's standards regarding the assessment of sources and the corroboration of information as well as the way the ECtHR assesses the reliability of sources in practice and how it makes sure its decisions are based on information that is corroborated by different sources. Finally, section 6 examines how the ECtHR determines the weight it attaches to a certain source and how it balances all the available information to come to a sound decision on the risk of a violation of Article 3. The analysis of the ECtHR's case law in this article will show that the ECtHR does not apply its own standards in a transparent and consistent manner. This raises questions as to the quality of the ECtHR's assessment of the risk of a violation of Article 3 ECHR.

Chapter 3; **A legal analysis of a crucial element in Country Guidance Determinations: Country of Origin Information**[329]

Chapter 3 examines the use of Country of Origin Information by the Immigration and Asylum Chamber of the United Kingdom Upper Tribunal in Country Guidance Determinations. In general, the chapter assesses which standards regarding the use of Country of Origin Information are set by the Upper Tribunal. Furthermore, it examines how these standards are applied by the Upper Tribunal while it assesses the general situation or the situation of a particular group of persons at risk in Iran, Somalia and Sri Lanka. The methodology at the basis of this chapter is discussed in section 2. The history of the system of Country Guidance Determinations is discussed in section 3. Section 4 focuses on the identification of evidence by the Upper Tribunal, more specifically, how the Upper Tribunal identifies relevant and up-to-date information. The manner in which the Tribunal assesses the reliability of sources is examined in section 5. The section focuses in particular on the assessment of expert witnesses, government sources, information by UN Agencies, NGO information, and news reports. Finally, section 6 examines how information should be balanced by the Upper Tribunal and how the Upper Tribunal balances information in practice in Country Guidance Determinations. The examination of the Country Guidance Determinations shows that the Upper Tribunal's assessments are based on a comprehensive range of Country of Origin Information, including information from expert witnesses, Governmental agencies, UN agencies, NGOs and news agencies. However, the Country Guidance Determinations would benefit from a more uniform, structured, approach to improve the transparency of the assessment of the reliability of information and the balancing process of Country of Origin Information. This would ensure a visibly 'effectively comprehensive decision.'

329 Femke Vogelaar, 'An Analysis of the Crucial Element in Country Guidance Determinations: Country of Origin Information' (2019) 31 *International Journal of Refugee Law* 492-515.

Chapter 4; **The Eligibility Guidelines examined: the use of Country of Origin Information by UNHCR**[330]

Chapter 4 focuses on the use of Country of Origin Information by the United Nations High Commissioner for Refugees (UNHCR) in the Eligibility Guidelines, which assess the protection needs of specific groups of asylum seekers. It assesses the standards set by UNHCR regarding the use of Country of Origin Information and whether, and how, UNHCR applies these standards in the Guidelines. The analysis is based on a study of the Eligibility Guidelines assessing the protection needs of asylum seekers from Afghanistan, Somalia, and Sri Lanka. The methodology used for the analysis of the Eligibility Guidelines is discussed in section 2. Section 3 focuses on the importance of Country of Origin Information and the relevance of UNHCR Eligibility Guidelines. The focus of section 4 is on the corroboration of information by UNHCR, its so-called 'triangulation' standard. The section discusses the occurrence of insufficient and unsupported statements and risk profiles in the Eligibility Guidelines. Moreover, it examines UNHCR's reliance on information from its network of field offices. Finally, section 4 looks into the use of primary sources and the existence of cross-checking mistakes. Section 5 continues to focus on the manner in which UNHCR assesses the information it relies on and how it balances this information. Section 6 examines whether UNHCR relies on up-to-date information in its Eligibility Guidelines. Analysis of the Eligibility Guidelines on asylum seekers from Afghanistan, Somalia, and Sri Lanka shows that UNHCR does not adhere to its own standards for the cross-checking of information and that this process lacks transparency. UNHCR statements are not consistently based on a variety of sources, and it appears that UNHCR does not consistently verify the Country of Origin Information it relies on. UNHCR's assessment of the reliability of sources, and the way it balances supporting and contradictory information, also lacks transparency. Moreover, the extent to which UNHCR field offices contribute to the Guidelines is not clear. Due to this lack of transparency, the reliability of UNHCR Eligibility Guidelines cannot always be presumed to be beyond doubt. As a result, each set of Guidelines should be assessed on its own merits and accorded appropriate weight in the process of balancing all available evidence during the assessment of a need for international protection.

Chapter 5; **The presumption of safety tested: the use of Country of Origin Information in the national designation of Safe Countries of Origin**[331]

This chapter focuses on the use of Country of Origin Information by the United Kingdom and the Netherlands in their decisions to designate Albania and Kosovo as Safe Countries of Origin. The chapter assesses the Country of Origin Information standards laid down in the European Asylum Support Office's Country of Origin Information Report Methodology, and whether, and how, these standards are applied by the United Kingdom and the Netherlands. Section 2 discusses the methodology at the basis of this chapter. Section 3 focuses on the

330 Femke Vogelaar, 'The Eligibility Guidelines Examined; The Use of Country of Origin Information by United Nations High Commissioner for Refugees' (2017) 29 *International Journal of Refugee Law* 617 – 640.

331 Femke Vogelaar, 'The Presumption of Safety Tested: The Use of Country of Origin Information in the National Designations of Safe Countries of Origin' *Refugee Survey Quarterly* (in press)

concept of Safe Countries of Origin in the European context. It looks at the history of the concept and the role of Country of Origin Information in the determination of a country as a Safe Country of Origin. The European Asylum Support Office's Country of Origin Information Report Methodology is discussed in section 4. In particular, its standards regarding the use of primary sources, the corroboration of information, and the balancing of information. The United Kingdom's practice of designating countries as safe is the focus of section 5. It first discusses the Safe Country of Origin concept in the UK context, the legislative basis and the procedure of designating countries safe (section 5.1). Second, it analyses the use of Country of Origin Information in the Country Policy and Information Notes at the basis of the policies regarding Albania and Kosovo (section 5.2). Section 6 focuses on the Dutch practice of designating Safe Countries of Origin. It discusses the Safe Country of Origin concept in the Dutch context, focussing on the legislative basis and the national designation procedure (section 6.1). Furthermore, it examines the use of Country of Origin Information in the designation decisions regarding Albania and Kosovo, the standard reasoning in individual decisions, and the review of the initial designation decisions (section 6.2).The analysis shows that the United Kingdom and the Netherlands do not adhere to the standards in the European Asylum Support Office's Country of Origin Information Report Methodology. Relatively, the United Kingdom Home Office's Country of Origin Information in support of the designation of Safe Country of Origin Albania is of higher quality than that of the Netherlands. Yet, it still lacks the use of primary sources, corroboration and balancing of information. The Dutch policy regarding Albania and Kosovo is based on extremely limited, mostly secondary, sources and out-of-date information. Moreover, it lacks a transparent analysis of properly weighed and balanced Country of Origin Information within the set Safe Country of Origin criteria. Neither the United Kingdom nor the Netherlands have sufficiently substantiated the presumption of safety in Albania and Kosovo with a wide range of properly balanced Country of Origin Information. Instead, other considerations, such as the number of asylum applications and recognition rates, appear to be the determining factor in the designation of the countries safe.

Chapter 6; **Transparency of the use of Country of Origin Information in the determination of a need for international protection**

Chapter 6 will bring together the findings of the examination of the leading jurisprudence of the ECtHR, the Country Guidance Determinations by the UK Upper Tribunal, the UNHCR Eligibility Guidelines and the national designations of Safe Countries of Origin by the Netherlands and the United Kingdom. The comparison of the standards and practices of the examined institutions against the ACCORD training manual will serve as the basis for recommendations on how the evidentiary assessment of Country of Origin Information can be improved The recommendations are addressed to the examined institutions. Moreover, a particular set of recommendations is addressed to European Union Member States and the future EU Agency for Asylum which will be tasked with (further) developing a common COI methodology and the issuing of detailed and regular guidance on the situation in specific countries of origin based on a common analysis of Country of Origin Information. section 6.2 examines how the different COI quality standards relate to each other. Section 6.3 brings together and compares the substantive criteria in the COI quality standards set by the examined institutions. It will measure the criteria against the standards regarding relevancy,

currency, accuracy, reliability and balance in the ACCORD training manual. Section 6.4 brings together and compares the institutions' approaches to transparency and traceability. It will set these approaches against the standard regarding transparency in the ACCORD training manual. Finally, section 6.5 makes recommendations on how the standards and practices of the ECtHR, the UK Upper Tribunal, UNHCR and the examined (former) EU Member States should be brought in line with the ACCORD training manual.